

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,))
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES))
FOR THE STATE OF OKLAHOMA,)
)
Plaintiff,)
)
vs.) No. 4:05-CV-00329-TCK-SAJ
)
TYSON FOODS, INC., et al,)
)
Defendants.)

- - - - -

THE VIDEO DEPOSITION OF DAVID BERRY,
produced as a witness on behalf of the Defendants, in
the above styled and numbered cause, taken on the 29th
day of August, 2007, in the City of Tulsa, County of
Tulsa, State of Oklahoma, before me, Marlene Percefull,
Certified Shorthand Reporter, duly certified under and
by virtue of the laws of the State of Oklahoma.

DAVID BERRY, 8-29-07

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I N D E X

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Questions certified:

PAGE 117 LINE 20

Q What was your understanding of why you needed to
take soil samples on those particular farms?

PAGE 136 LINE 14

Q Do you know what CDM was going to do with them?

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1 (Whereupon, video the deposition began at
2 9:04 a.m.)

3 THE VIDEOGRAPHER: We are now on the
4 record for the deposition of Mr. David Berry. Today
5 is August 29th, 2007. The time is 9:04 a.m. Could 9:04AM
6 counsel please identify themselves for the record?

7 MR. GRAVES: James Graves with Bassett Law
8 Firm representing George's, Inc., and George's
9 Farms, Inc.

10 MS. LONGWELL: Nicole Longwell on behalf 9:05AM
11 Peterson Farms.

12 MR. MIRKES: Craig Mirkes helping Nicole
13 Longwell.

14 MS. HILL: Theresa Hill and Carla Jimerson
15 on behalf of the Cargill defendants. 9:05AM

16 MR. BOND: Michael Bond representing the
17 Tyson defendants and Cobb-Vantress.

18 MS. HILLERMAN: Holly Hillerman on behalf
19 of the State of Oklahoma.

20 MS. WEAVER: Sharon Weaver on behalf of 9:05AM
21 the State of Oklahoma.

22 MS. STEWART: Janet Stewart with the
23 Oklahoma Department of Agriculture, Food and
24 Forestry.

25 MR. GRAVES: Would the people on the 9:05AM

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1 telephone also do the same? 9:05AM

2 MS. GRIFFIN: Jennifer Griffin on behalf
3 of Willow Brook Foods.

4 MR. SANDERS: Bob Sanders on behalf of
5 Cal-Maine. 9:05AM

6 THE VIDEOGRAPHER: Thank you. The witness
7 may be sworn.

8 DAVID BERRY,
9 having first been duly sworn to testify to the truth,
10 the whole truth and nothing but the truth, testified as
11 follows:

12 DIRECT EXAMINATION

13 BY MR. GRAVES:

14 Q Could you state your full name?

15 A David Berry. 9:05AM

16 Q And, Mr. Berry, what is your address?

17 A P.O. Box 488, Locust Grove, Oklahoma, 74352.

18 Q And do you actually live in Locust Grove or is
19 that in the country somewhere?

20 A I live about three miles outside of Locust Grove 9:06AM
21 in the country.

22 Q Okay. Mr. Berry, have you ever given a deposition
23 before?

24 A Years ago.

25 Q Okay. I'll just go through a few basics of giving 9:06AM

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1 a deposition and I'm sure that your attorneys may have 9:06AM
2 visited with you about this, but if you would just --

3 A Okay.

4 Q -- give a -- try to make sure to give a verbal
5 response rather than a head nod or a head shake. 9:06AM

6 A Yes, sir.

7 Q And I'll try not to step on your answers and you
8 try not to step on my questions and all of that makes
9 it a lot easier for the court reporter to get it down
10 on paper later on, okay? 9:06AM

11 A I understand.

12 Q Also, if I ask a question and you're not clear on
13 what I mean by it, just let me know and I'll try to
14 rephrase it in a way where we're both understanding
15 each other, okay? 9:06AM

16 A I understand.

17 Q Mr. Berry, would you tell me a little bit about
18 your educational background?

19 A I'm a -- I graduated from high school, from Locust
20 Grove. That's my education. 9:07AM

21 Q Okay. Have you attended any college courses?

22 A No, sir.

23 Q Okay. So you have no credit hours from a
24 university or a technical school?

25 A No, sir. 9:07AM

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1 Q What year did you graduate high school? 9:07AM

2 A '86.

3 Q How long have you lived in the Locust Grove area?

4 A All my life.

5 Q Starting with when you left high school, let's go 9:07AM

6 through your employment background, if we can, to the

7 extent you can remember it.

8 A I left high school and I was a bull rider and I

9 left graduation night and went rodeoing until about the

10 mid '90s. And then I kept riding bulls off and on, but 9:08AM

11 I taught bull riding schools and I raised bucking bulls

12 and started taking bulls to rodeos and bull rides. As

13 far as job wise, I just, you know, if I got short on

14 money from bucking off too many bulls, I would help

15 carpenter work or something, build barns, stuff like 9:08AM

16 that.

17 Q Okay. After you stopped doing the rodeo

18 circuit --

19 A Uh-huh.

20 Q -- where did you work next? 9:08AM

21 A Actually, I mean, the first actual real job I've

22 had is the job I have now as a poultry inspector for

23 the Department of Agriculture, which I believe it was

24 in 2000 whenever I started there.

25 Q And Mr. Berry, why don't you just for the record, 9:09AM

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1 who is your employer? 9:09AM

2 A Well, I guess the Oklahoma Department of
3 Agriculture.

4 Q Okay. And your position is called poultry
5 inspector? 9:09AM

6 A Yes, sir.

7 Q Is that the only position you've held with the
8 Oklahoma Department of Agriculture?

9 A Yes, sir, it is.

10 Q Have you had the same supervisor the entire time 9:09AM
11 you've been there?

12 A Yes, sir.

13 Q Who is your supervisor?

14 A Dan Parrish.

15 Q And is that who you report directly to? 9:09AM

16 A Yes, sir, it is.

17 Q There's no buffers in between you and Mr. Parrish?

18 A No, sir.

19 Q Okay. Do you have anyone who reports to you in
20 your position as poultry inspector? 9:09AM

21 A In what way? As far as reports to me as what?

22 Q Someone that you supervise?

23 A Somebody that I supervise?

24 Q Right.

25 A I don't supervise nobody. 9:09AM

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1 Q Okay. That was the question. Sorry I wasn't 9:09AM
2 clear. With regard to your position as a poultry
3 inspector when you began there, were you provided any
4 type of training or coursework in order to begin
5 working in that position? 9:10AM

6 A I didn't go to no classes. I mean, I wasn't
7 required to do that, but we've had -- over the period
8 we've had different, I don't know how you'd say it,
9 classes, I guess, over certain, like, you know,
10 training, if you will, over certain things that we 9:10AM
11 needed to do.

12 Q Okay. And leaving aside -- I'm going to call that
13 continuing education and leaving aside that type of
14 thing, was there any type of training that you had to
15 have up front before you could hit the ground as a 9:10AM
16 poultry inspector?

17 A Not that I was aware of.

18 Q Okay. How did you know, for example, when you
19 began the job where you were going to be going and what
20 you were going to be doing when you got there? 9:11AM

21 A Once I got the job --

22 Q Right.

23 A -- and was assigned what I do? They give you a
24 list of poultry growers and they assign you a
25 territory. And then they give you a list of poultry 9:11AM

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1 growers that's in that territory and that's your, you 9:11AM
2 know, that's -- they don't really tell you where you
3 got to go every day, you just -- as long as you cover
4 your territory and go to the poultry growers in that
5 area in no certain order. 9:11AM

6 Q And did anyone ride along with you to show you
7 where these farms were or to assist you or anything
8 when you first started out?

9 A When I first started out, there were -- there was
10 another poultry inspector that had, had the position 9:11AM
11 that I have now and I rode with him. I don't know how
12 long, but it was quite some time that I rode along with
13 him. And my first -- when I hired on, I wasn't a
14 poultry inspector, I really don't even know what my
15 title was, but I helped gather plans for, like, the 9:12AM
16 Animal Waste Management Plan, like the land layout, the
17 acreage and the boundaries and so forth. And then I --
18 but doing that, I rode with the poultry inspector
19 that's in my position and -- or was in my position.
20 And that's how I kind of, basically, learned where the 9:12AM
21 area was and the barns were, but they send you a
22 three-page application that the poultry farm operation
23 filled out and it has driving directions on there and
24 that's how you find the farm if you don't know where
25 you're going. 9:12AM

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1 Q The Department of Agriculture provides you with 9:12AM
2 that?

3 A Yes, that the farm provided them with.

4 Q Okay. Who was the previous inspector that held
5 your position that you were riding around with in order 9:12AM
6 to sort of train up for your job?

7 A Brett Sholar, I believe. S-H-O-L-A-R, I believe
8 is how that was spelled.

9 Q And was it your understanding that when you
10 finished training with Mr. Sholar you were going to be 9:13AM
11 taking over his area or --

12 A No.

13 Q -- it just worked out that way?

14 A No, it just worked out that way. Mr. Sholar, I
15 believe, moved on to a different position somewhere 9:13AM
16 else. I don't know what it was. I don't think it's
17 with the Department of Ag but -- so it left the
18 inspector job there vacant and for whatever reason,
19 they felt like I could do the job and moved me up to
20 that position. 9:13AM

21 Q When you were traveling around with Mr. Sholar,
22 was it your understanding that you were in training to
23 be a poultry inspector?

24 A No, no. I had no idea. I mean, if Mr. Sholar
25 hadn't left, I wouldn't have been the inspector. I was 9:13AM

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1 just hired to do the job of -- at the time of what I 9:13AM
2 was doing. That was collecting information.

3 Q Do you know what the title of that position was,
4 if any?

5 A I don't have no idea. 9:14AM

6 Q Okay. Have you ever had anyone else work in that
7 type of position with you, that is, ride around with
8 you and help you gather information?

9 A No, I haven't.

10 Q Have you had the same territory the entire time 9:14AM
11 that you've been a poultry inspector?

12 A Pretty much so, yes. Once I took over
13 Mr. Sholar's territory, I don't know how long after
14 that, but another inspector left our division and they
15 didn't rehire another inspector for that position and 9:14AM
16 me and John Littlefield, which is the other poultry
17 inspector, took over his territory and split it up kind
18 of and so it kind of added to my territory a little bit
19 more.

20 Q Who was the other inspector that left? 9:14AM

21 A Gary Fisher, I think, is his name.

22 Q Do you know about when Mr. Sholar left?

23 A I would say and -- because I'm not real sure, but
24 I would say it was in '01, '02 maybe. Could have been
25 later than that. 9:15AM

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1 Q Okay. And so would it have been the case that 9:15AM
2 there was a year or two, it sounds like, that you were
3 riding around with Mr. Sholar?

4 A Yeah, if that long. It's been so long ago that
5 it's kind of hard to remember that. 9:15AM

6 Q Do you know about when it was that you had part of
7 Mr. Fisher's territory added to your area?

8 A Just a little bit after that it seems like.

9 Q Okay. So along about 2002 or so?

10 A Maybe, maybe a little bit later than that. 9:15AM

11 Q Okay. Have we covered, I guess, the training that
12 you had as far as at the time you started as a poultry
13 inspector?

14 A Correct, yeah.

15 Q Now, I don't know that I'm real clear on what all 9:16AM
16 you were gathering whenever you were riding around with
17 Mr. Sholar. You said gathering land layout for
18 management plans, what did that involve?

19 A Basically, it was where I would go to the farm and
20 get an idea how many, how many acres the landowner had 9:16AM
21 and I had these plot maps that I would draw out to,
22 basically, the quarter section down to the
23 quarter/quarter section of the guy's land and turn my
24 drawings in to the office for them to help prepare maps
25 for the Animal Waste Management Plan. 9:16AM

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1 Q How did you know how to do that? 9:16AM

2 A I didn't.

3 Q If somebody told me to go draw a map right now, I
4 don't think I'd know what to do.

5 A I just -- I say I didn't, I did not know how to 9:17AM
6 and they took me into the office in Oklahoma City and
7 Dr. Sharazi helped show me how -- one, what they wanted
8 and, two, how to put it on paper for them.

9 Q Was this before you started doing that?

10 A Yes, sir, it was. 9:17AM

11 Q Who is Dr. Sharazi?

12 A Somebody that works in our office.

13 Q That's all you know about him?

14 A Yes, sir.

15 Q Anything else you remember doing besides just 9:17AM
16 getting out and gathering information about the acreage
17 and try to plot that out on a map?

18 A Yeah, that's what I did.

19 Q And then did you somehow transmit that information
20 to Mr. Sholar? 9:17AM

21 A No, Mr. Sholar was the poultry inspector and I
22 rode with him because it was his farms that -- his
23 poultry operations that I was going to so I just rode
24 with him to the different farms.

25 Q So it was more just a convenience? 9:18AM

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1 A Yes, sir. 9:18AM

2 Q Who were you providing these maps to then?

3 A To our office. I turned them in to Mr. Sharazi.

4 And it wasn't a map that I turned in, it was a --

5 actually, it was a piece of paper that had a lot 9:18AM

6 squares on it.

7 Q Okay.

8 A That you plot it down, your land down to the

9 quarter section.

10 Q And do you know what was done with these plots 9:18AM

11 that you had prepared, what Dr. Sharazi did with them?

12 A You know, my understanding is it helped to put a

13 AWMP together or maybe not an AWMP, but some kind of

14 information that they wanted on the land.

15 Q And that's a management plan for that farm? 9:18AM

16 A Yes.

17 Q Other than the training that Dr. Sharazi provided

18 you as far as this initial position, I think you told

19 me you didn't really have a title or a name for that

20 position, but other than the training that Dr. Sharazi 9:19AM

21 provided, did you have any other training for that

22 particular position?

23 A No.

24 Q And with regard to poultry inspector, when you

25 began as poultry inspector, did you have any training 9:19AM

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1 other than what you've described for me as far as that 9:19AM
2 you had ridden with Mr. Sholar and observed what he had
3 done when he was out there?

4 A Right.

5 Q Was that the extent of it? 9:19AM

6 A Yes, sir.

7 Q What is your understanding of what, what
8 responsibilities the poultry inspector position has?
9 What do you do?

10 A What do I do? 9:19AM

11 Q Right.

12 A I go to poultry operations and check their records
13 and, basically, what I'm checking there is they -- each
14 poultry farm has to have an initial nine-hour class
15 their first year in business and then three hours of 9:20AM
16 update education, continuing education after that. And
17 I check that to make sure they're getting their
18 education. I check to make sure they're keeping track
19 of taking a soil test, if they're having their litter
20 land applied. I check and make sure that they're 9:20AM
21 taking a litter test accordingly as the law says. And
22 then I check the education, soil litter test and, you
23 know, what they did with their litter, if they sold it
24 or land applied it. It's just a recordkeeping position
25 that I have. 9:20AM

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1 Q Okay. And so when you said at the outset that you 9:20AM
2 check their records, the records that you were
3 referring to are these educational records, the soil
4 test, the litter test and what they did with their
5 litter? 9:20AM

6 A Yes, sir.

7 Q Any other records that you check when you go to a
8 farm?

9 A Not that I can think of right now. I mean, that's
10 the gist of it there. 9:21AM

11 Q And how often do you go to each poultry farm, is
12 there a set --

13 A We do an annual inspection once a year.

14 Q Are there ever occasions when you would go out
15 there more frequently for some reason? 9:21AM

16 A If there's a complaint or we do technical
17 assistance, you know, I'll go by the farm and if the
18 owner or operator is there, we visit just to make sure
19 he understands to get a soil test, litter test,
20 education. Especially if it's a new grower that don't 9:21AM
21 understand what the law -- poultry law is, and so. And
22 then, like I say, if we have complaints. Sometimes a
23 complaint is against a poultry grower and sometimes
24 it's against just a landowner. But the poultry litter
25 originated from somewhere and I usually go back to that 9:21AM

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1 unless it come out of Arkansas. 9:22AM

2 Q Okay. We'll come back to that. We'll circle back
3 around to that. You also mentioned earlier somewhat I
4 termed continuing education classes or courses that
5 you've attended. What types of -- what types of 9:22AM
6 courses are those and how often do you have to do that?

7 A That I've attended?

8 Q Yeah.

9 A They're not courses. There have just been
10 training classes where the inspectors will come into 9:22AM
11 the office and, you know, we being like FEMA trained or
12 certified for disaster and been GPS trained to take GPS
13 readings. You know, off the top of my head, it's kind
14 of hard to draw up what all we've been, you know, been
15 through with that. 9:22AM

16 Q Do you have to have a certain number of
17 educational hours for your position on any type of
18 annual basis?

19 A Not that I'm aware of.

20 Q Okay. So as far as what courses you attend, how 9:23AM
21 do you find out about -- you said they weren't really
22 courses, whatever we want to call them.

23 A Right.

24 Q The FEMA training or the GPS training or whatever
25 training we're talking about, how often would it be 9:23AM

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1 that you would do that type of thing? 9:23AM

2 A There's no rhyme and reason to it. If we're fixed
3 like when we're -- last summer we GPS'd the poultry
4 operations, the entrance ways to the poultry
5 operations, and so Dan, my boss, called all the poultry 9:23AM
6 inspectors in and had us to go kind of through a
7 one-day course of how to run the GPS unit and what they
8 expected of us to do.

9 Q You were GPS'ing the entrance to all the poultry
10 operations? 9:23AM

11 A Right.

12 Q Okay. When was that?

13 A I believe it was last summer.

14 Q Summer of '06?

15 A Yes, sir. 9:23AM

16 Q I take it that that was something that you all had
17 not ever done previously?

18 A No.

19 Q How is it communicated to you that there's some
20 type of training that Mr. Parrish wants you to attend? 9:24AM

21 A We receive a memo letter.

22 Q From Mr. Parrish?

23 A Yes, sir.

24 Q Do you keep those types of memorandums?

25 A No, I don't. 9:24AM

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1 Q What do you do with them? 9:24AM

2 A I throw them in the trash.

3 Q Okay.

4 A After I've went.

5 Q Do you know if those are kept anywhere by the 9:24AM
6 Department of Agriculture, those types of memorandums
7 that are just asking you to come in and attend
8 something?

9 A I wouldn't know.

10 Q I think I had asked you a little bit about your 9:24AM
11 territory, what territory you cover. Geographically,
12 can you describe for me what area it is that you cover?

13 A I go from Highway 412. I go south to, to I
14 believe it the Arkansas River, south of I-40 down
15 there. And then I pretty much go from Highway 69 to 9:25AM
16 the Arkansas line as far as my poultry operations go.

17 Q Do you have any idea of how many farms that
18 encompasses?

19 A I haven't got a recent count for this year. We're
20 fixing to start our annual inspections and I'll get a 9:25AM
21 new poultry list of if farms quit or new ones have
22 built. My list will change from year to year but I'd
23 say it's somewhere around 110 poultry operations
24 probably, estimating that.

25 Q And is it your understanding or do you know 9:25AM

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1 whether that entire territory would be contained within 9:25AM
2 what's called the Illinois River Watershed?

3 A Only part of that is.

4 Q Okay. Only part of your territory?

5 A Yes, sir. The northern, excuse me, the northern 9:26AM
6 part of my territory would be the Illinois, Fort Gibson
7 and Tenkiller.

8 Q Do you have any estimation of how much of the 110
9 or so poultry farms that you visit are located within
10 the Illinois River watershed? 9:26AM

11 A I don't know. Probably more than half if I was to
12 estimate that for you.

13 Q And then is it your understanding that
14 Mr. Littlefield would also have some farms located in
15 that watershed? 9:26AM

16 A Yes, he does.

17 Q That he visits?

18 A Yeah, he goes from 412 north so he'll have some in
19 it, too.

20 Q When you attend training where do you go to attend 9:26AM
21 that type of training? Where are those training
22 things? Like the FEMA or the GPS, where do you go to
23 attend that?

24 A We go to the Oklahoma City Ag building.

25 Q About how long do those training sessions last? 9:27AM

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1 A All day. 9:27AM

2 Q Are they multiple days?

3 A No, they're all day.

4 Q Just a single day usually?

5 A Yes, sir. 9:27AM

6 Q Who's providing the instructions at those
7 seminars?

8 A Whoever the -- whoever's expertise. You know, I
9 don't know names but, I mean, it's not somebody that I
10 know or that I work with. 9:27AM

11 Q Is it your understanding they're employees of the
12 Department of Agriculture or do they bring in outside
13 folks?

14 A You know, I've never really asked where they came
15 from. 9:28AM

16 Q Okay. You mentioned that you had, you had been
17 involved in raising bulls. Were there other what I
18 will call domesticated animals that you've been
19 involved in raising? I'm not talking about dogs and
20 cats. 9:28AM

21 A No, just cows and bulls.

22 Q Cows and bulls. Have you ever -- I take it, did
23 you own those cows and bulls when you were --

24 A Yeah.

25 Q You weren't managing them for someone else? 9:28AM

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1 A No, no. 9:28AM

2 Q Did you have a farm or a ranch where you were
3 raising those?

4 A Yeah, I grew up on a farm.

5 Q Okay. And that's in the Locust Grove area? 9:28AM

6 A Yes, sir.

7 Q So did your parents also have a farm?

8 A Yeah, it was their farm that I grew up on.

9 Q Okay. What all did they raise on their farm?

10 A Bulls and cows. 9:29AM

11 Q Okay. That's it?

12 A Yeah, yes, sir.

13 Q Do you know whether your parents ever used poultry
14 litter for any type of grazing reasons on their farm?

15 A Yes, they have. 9:29AM

16 Q And did you use it whenever you were raising cows
17 and bulls there?

18 A No.

19 Q Okay. Is there a reason why not?

20 A No, because my dad did. 9:29AM

21 Q Oh, okay. Your dad was still using it there?

22 A Right.

23 Q Okay. You find it to be a good fertilizer?

24 A Seems to be.

25 Q For the grasses that the cows need? 9:29AM

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1 A It seems to be. We never put commercial 9:29AM
2 fertilizer down so, you know, we really didn't know but
3 it seems to grow grass.

4 Q Where did you -- where did your father get the
5 poultry litter that he used on the farm, do you know? 9:30AM

6 A My sister had a poultry farm.

7 Q Okay. Where is your sister's poultry farm
8 located?

9 A In Locust Grove, south of Locust Grove.

10 Q Does she still operate a poultry farm? 9:30AM

11 A She's bankrupt now.

12 Q Okay. Who did she grow for when she was a poultry
13 farmer?

14 A Tyson.

15 Q What's her name? 9:30AM

16 A Tammy. T-A-M-M-Y, Cunningham.

17 Q Do you know how long she was a poultry grower?

18 A She grew chickens before I become the poultry --
19 before I worked for the Department of Ag so maybe, I
20 don't know, sometime in the late '90s. If I was to 9:31AM
21 guess, estimate that, she bought my dad's old place and
22 her and her new husband there built the poultry barns.

23 Q What's her husband's name?

24 A Jack.

25 Q Okay. You think they started the farm in the late 9:31AM

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1 1990s? 9:31AM

2 A I believe it would have been in the late '90s
3 there, 1990s. They were growing chickens before I
4 started to work for the Department of Ag and that was
5 in 2000, you know, so they were in business before I 9:31AM
6 started.

7 Q Okay. And do you know when they stopped growing
8 chickens?

9 A Just a few months ago.

10 Q Okay. And your father used their poultry litter? 9:31AM

11 A Yes.

12 Q Did they also have any cattle at their farm?

13 A Yes.

14 Q Your sister and brother-in-law?

15 A Yes. 9:32AM

16 Q Did they use some of the poultry litter at their
17 farm, too?

18 A No, they didn't.

19 Q Okay. Did your father use all of their poultry
20 litter? 9:32AM

21 A No, they would sell to different people and then
22 he would -- I mean, he got a pretty good deal because
23 it was his daughter's litter.

24 Q Sure.

25 A But he had to pay to have a licensed applicator 9:32AM

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1 spread it so, you know, he didn't get it -- I think we 9:32AM
2 only put it on there like twice the whole time she was
3 in business.

4 Q Do you know if he started using poultry litter
5 there from your sister's farm after the time frame 9:33AM
6 that, like, the Poultry Registration Act and those
7 types of regulations went into place?

8 A Yeah, yeah, it was just in the last, I'd say, five
9 years. Within the last five years he got to use some
10 of it and then at that time, I think he's only been 9:33AM
11 able to put it down a couple of times.

12 Q So did he have to soil test and litter test and
13 keep records and all that kind of stuff?

14 A Oh, yeah. Well, my sister did the litter test
15 because they're required to do that. 9:33AM

16 Q Right.

17 A My dad had to take a soil test, you know, or the
18 applicator wouldn't come and spread it.

19 Q Okay. What is your father's name?

20 A Harold. 9:33AM

21 Q Berry?

22 A Yes, sir.

23 Q Okay. And you said he was only able to put it
24 down a couple of times?

25 A Yeah, yeah. 9:33AM

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1 Q Was that because of the soil test results he got? 9:33AM

2 A That was because of the cost of the money to have
3 it spread.

4 Q Okay. Did he have annual inspections by the
5 Department of Agriculture when he was applying litter? 9:34AM

6 A No.

7 Q For applying litter?

8 A We don't annual inspect people that just spread
9 litter. Unless it's a complaint, we don't never go out
10 to their farm or have to. 9:34AM

11 Q Okay.

12 A The only places we go annually is to the poultry
13 operation.

14 Q And did anybody to your knowledge ever complain
15 about your father spreading litter out there? 9:34AM

16 A No, sir.

17 Q Okay. So as far as you know, your father didn't
18 have any contact with the Department of Agriculture
19 over his use of poultry litter?

20 A Other than me and I wasn't -- I mean, other than 9:34AM
21 just visiting with me of what the rules and laws are.

22 Q Okay. What about your -- with regard to your
23 brother-in-law and your sister, did they also have to
24 do -- I guess they didn't have to do soil testing
25 because they weren't using the litter, but did they 9:35AM

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1 litter test? 9:35AM

2 A You know, I wasn't their inspector.

3 Q Who would their inspector have been?

4 A Mr. Littlefield.

5 Q Okay. 9:35AM

6 A But in the territory that they're in, they would
7 be required to litter test every year.

8 Q And so when you were raising cows and bulls, my
9 understanding then is that you were doing it on your
10 father's farm? 9:35AM

11 A Correct.

12 Q Okay. So whatever he was using as a fertilizer on
13 that farm is what your cows and bulls were getting?

14 A Do what now?

15 Q I mean, whatever he was using as a fertilizer for 9:35AM
16 the grasses there, that's the grass that your cows were
17 grazing?

18 A Correct.

19 Q You weren't responsible for fertilizing those
20 fields? 9:35AM

21 A No.

22 Q I was just making sure I understood that whenever
23 you told me that you were on your father's farm?

24 A Uh-huh.

25 Q Okay. I think we kind of briefly went through 9:36AM

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1 your description of your job duties as a poultry 9:36AM
2 inspector with the Oklahoma Department of Agriculture
3 and you mentioned annual inspections, complaint
4 investigations and technical assistance, right?

5 A Correct. 9:36AM

6 Q Are there any other things that you do as a
7 poultry inspector besides those that aren't covered by
8 those three areas?

9 A You know, I do -- I'm pretty much at the direction
10 of what my director asks me to do. You know, again, 9:36AM
11 that's pretty much what we do, but like last summer we
12 went out and did GPS on the poultry entrances so
13 occasionally we do do something that's not a daily
14 routine for us.

15 Q Okay. And I'll ask you some questions about that 9:37AM
16 in a little bit, I just wanted to make sure that I had
17 an understanding generally speaking of what you do on a
18 day-to-day basis?

19 A Generally that's what I do, yes, sir.

20 Q Do you have an idea of how many litter 9:37AM
21 applicators --

22 A Huh-uh.

23 Q -- you have in your area?

24 A I have no clue. I have not really just sat down
25 to count that. 9:37AM

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1 Q So you're not able to estimate that? 9:37AM

2 A No, I'm not.

3 Q Or ballpark it. Okay. With regard to the 110 or
4 so growers that you, that you are responsible for for
5 inspecting, do you know how many of those have 9:37AM
6 phosphorous based management plans in place?

7 A I don't know what a phosphorous based management
8 plan is.

9 Q Do you understand that part of what you're doing
10 is going out and insuring that -- well, strike that. 9:38AM
11 What do you understand that a management plan is there
12 for?

13 A An Animal Waste Management Plan.

14 Q What is your understanding of what that's for,
15 what that's intended to do? 9:38AM

16 A My understanding is that they, one, the law
17 requires the poultry operation to have it. And inside
18 that plan, shows them where they can spread, where they
19 can't spread and how much they can spread and then what
20 they're to do with their dead birds. 9:38AM

21 Q With regard to how much they can spread, what's
22 your understanding of how that's determined?

23 A Well, before chicken litter can be spread, poultry
24 litter can be spread you have to have a soil test.

25 Q What are they testing for? 9:39AM

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1 A All that I know that we look at is the N, the P 9:39AM
2 and the K, but the phosphorous level, depending on the
3 area that they're, some areas it's 400, some areas it's
4 300 that they can't exceed. The soil test basically
5 tells them if they can spread litter and the litter 9:39AM
6 test will tell them how much they can spread.

7 Q Let's talk about the soil test. How does the soil
8 test tell if they can spread litter? What are you
9 looking at to determine if they can spread litter?

10 A Well, there's a phosphorous number there. Besides 9:39AM
11 the phosphorous number, if they're in a limited
12 watershed it's 300 and if it's a non-limited, it's 400.

13 Q So now whenever -- well, let's talk about the
14 litter test. What's your understanding of what's being
15 reviewed to determine how much litter they can spread? 9:40AM

16 A Well, you can only -- the way I understand it, you
17 can only put down 200 pounds of phosphorous per acre
18 and so they look at the litter test to see how much
19 phosphorous is in that litter.

20 Q And is it your understanding that both this soil 9:40AM
21 test and this litter are accounted for within the plan?

22 A Yes, sir.

23 Q Okay. So now do you understand what I'm talking
24 about whenever I ask you how many of these growers have
25 a phosphorous based plan? In other words, you're 9:40AM

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1 looking at phosphorous, a phosphorous number on a soil 9:40AM
2 test, you're looking at a phosphorous number on a
3 litter test and you're using that in order to devise
4 their plan, correct?

5 A I've never heard it said that way. I've always 9:40AM
6 heard it as an Animal Waste Management Plan.

7 Q Okay.

8 A Is why I didn't know what you was talking about.

9 Q Okay. Do you understand what I'm talking about
10 now? 9:40AM

11 A We're both talking about the Animal Waste
12 Management Plan.

13 Q Okay. How many of these growers have those types
14 of plans that you are responsible for?

15 A Well, if I have 110 operations estimated, I 9:41AM
16 couldn't give you an exact number, but I have several
17 of my farms that have a plan. Some of them are
18 probably going to be expiring because they're only good
19 for six years, so if they got one six years ago,
20 they're probably going to start expiring and we're 9:41AM
21 going to need to update it.

22 Q Do you know whether any of the growers are waiting
23 on a plan to be written for their farm?

24 A You know, I couldn't tell you who. I'm sure there
25 may be but I couldn't tell you who it would be. 9:41AM

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1 Q I'm not asking that right now. I'm just asking 9:41AM
2 you whether you -- have you come across that type of
3 situation as a poultry inspector where somebody --

4 A Oh, yeah.

5 Q A poultry grower -- 9:41AM

6 A Is waiting on a plan?

7 Q Is waiting on a plan?

8 A Right.

9 Q Do you have any idea whether any of your growers
10 that you're responsible for right now of the 110 or so 9:41AM
11 are waiting for a plan? In other words, they've
12 applied or asked for one but they don't have one?

13 A Correct. Yeah, I don't know how many but I'm sure
14 there is.

15 Q Okay. 9:42AM

16 A Some of my farms are new, a new owner took over.

17 Q To your knowledge, for a grower who is waiting on
18 a plan, is there anything that they can do to legally,
19 under Oklahoma Law, under the laws that you enforce,
20 use their litter or sell it to someone else or whatever 9:42AM
21 the case may be, use their litter in some way if they
22 don't have a plan?

23 MS. WEAVER: Object to form.

24 Q Do you understand my question?

25 A Can -- if the poultry grower doesn't have an 9:42AM

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1 Animal Waste Management Plan, can he still spread his 9:42AM
2 poultry litter?

3 Q If he's waiting for a plan? In other words, if he
4 applied but hasn't had one written yet?

5 A The only thing that they're required to do to have 9:42AM
6 litter spread is have a soil test and have a litter
7 test and have a licensed applicator spread it.

8 Q So if they can show that they've had a soil test
9 and a litter test done and that they're going to use a
10 licensed applicator, they can use the litter? 9:43AM

11 A They can spread their litter.

12 Q Okay. How do they determine if they can spread
13 their litter and how much they can spread if all they
14 have are the two test results but hasn't been
15 incorporated into the plan? 9:43AM

16 A Well, depending on where they're at when they take
17 their soil test, they ask to be below 300 or 400 on the
18 phosphorous level.

19 Q Depending on which watershed they're in?

20 A Yes, sir. 9:43AM

21 Q Okay. And then what about with regard to the
22 litter test, how do they know how much they can spread,
23 assuming they're 300 or 400 as the case may be?

24 A I think, I mean, and I don't know because I'm not
25 an applicator, but I would assume that the applicator 9:43AM

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1 would look at the litter test and I believe that 9:43AM
2 there's a way of figuring how many tons to an acre that
3 they can spread assuming that the soil test, you know,
4 is where they can spread. I don't determine the rate
5 that they spread. 9:44AM

6 Q Okay. When a grower has a plan, though, is part
7 of your annual inspection to review that plan and
8 review their records and make sure that they've
9 complied with that plan?

10 A Correct. 9:44AM

11 Q If I'm a grower who doesn't have a plan but I've
12 done my soil test and my litter test, how would you
13 perform your annual inspection at that point in order
14 to determine whether I've done what I was supposed to
15 do? 9:44AM

16 A What I do is I have to write down the date of
17 their soil test and date of their litter test and then
18 I look at their application records or their poultry
19 litter sold or given away. The test has to be took
20 before it was sold or has to be took before it was land 9:45AM
21 applied so I look at those dates. But, basically --
22 and then as far as their Animal Waste Management Plan
23 goes, if they don't have it they should have a letter
24 on file that says that they've applied for a plan and
25 it should be dated. And normally I'll write that date 9:45AM

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1 down of the letter that they've applied and a copy of 9:45AM
2 that letter is in the -- in our Oklahoma City office.

3 Q And that's the extent of what you're able to do on
4 your annual inspection?

5 A Correct. 9:45AM

6 Q If a grower doesn't have a plan?

7 A Correct.

8 Q With regard -- but is that also the extent of what
9 a grower needs to do in order to comply with the laws
10 that you enforce in Oklahoma? 9:45AM

11 MS. WEAVER: Object to form.

12 A You know, I don't -- as far as what I go out and
13 check for, that's what I check for when I'm doing the
14 annual inspection is a litter test, soil test and, you
15 know, of course, they're AWMP, but if they don't have 9:46AM
16 it they have got to have a letter. If they don't have
17 a letter then they have to go get a letter to apply for
18 a plan.

19 Q And if they've got those things, at that point
20 they're in compliance as far as you're concerned? 9:46AM

21 A You know, I just report what I see, I don't
22 determine who's in compliance and who's not.

23 Q What do you do if you get there and someone
24 doesn't have one of these things?

25 A It goes on their inspection sheet or, you know, 9:46AM

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1 that it's not available. 9:46AM

2 Q Okay.

3 A And then a copy of my inspection sheet goes to
4 Oklahoma City and that's where it's determined who's in
5 compliance and who's not. 9:46AM

6 Q And your inspection sheet would not contain a
7 notation like that if they've done the things that
8 you've just described, either have a plan --

9 A If they have everything, then all the blanks would
10 be filled in with the date or number, basically, so 9:46AM
11 there wouldn't be no blanks. If it's not there, I
12 write not available and there's a memo spot on my
13 inspection sheets that you can write notes to.

14 Q Okay. To your knowledge, does anyone else from
15 the State of Oklahoma go out and inspect these 110 or 9:47AM
16 so poultry farms that you go out and inspect?

17 A You know, as far as my poultry operations, I'm the
18 only one that I'm aware of that goes out. I wouldn't
19 know.

20 Q Okay. Do you know whether anybody else from the 9:47AM
21 Department of Agriculture would go out to any of these
22 farms for any reason besides you?

23 A I wouldn't know.

24 Q Okay. As far as you know are you the only one?

25 A That I'm aware of. 9:47AM

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1 Q Okay. Do you know where a grower goes to apply 9:47AM
2 for a plan?

3 A They can go to the NRCS office in the county they
4 live in.

5 Q Anywhere else? 9:47AM

6 A We have two. I believe it's retired soil
7 scientists that work for us now that are helping put
8 plans together.

9 Q Who are those folks?

10 A Ed Abernathy and R. C. Brinley. 9:48AM

11 Q Where are they located?

12 A I'm not real sure where they're from. They're in
13 the southern part of Oklahoma, around Poteau and
14 Wilberton maybe, if I correctly remember that.

15 Q How would a grower get in touch with one of those 9:48AM
16 folks if they are waiting on a plan?

17 A They can write a letter to Dan Parrish and request
18 that we do their plan for them.

19 Q Okay. And so does this letter that you described,
20 the letter that would be on file at the farm advising 9:48AM
21 that they've applied for a plan but haven't received
22 it?

23 A Correct.

24 Q Does that come from either NRCS or one of these
25 folks? 9:48AM

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1 A The letter that they've applied for a plan would 9:48AM
2 come from the NRCS office.

3 Q Okay. Are you, as you sit here today, I know
4 there's roughly 100 of them, are you aware of any of
5 the farms that you have responsibility for right now 9:49AM
6 that -- where the files are not complete?

7 A Complete as in?

8 Q That is, the things that you check for when you go
9 to their farm. Are you aware of any growers in your
10 area that don't have all those things? 9:49AM

11 A You know, not as of current. I do know I have
12 growers that, as of this year, will need a new soil
13 test or a new litter test. But they're not out of
14 compliance as of today, but they are required to have
15 it by -- before they sold their litter or land applied 9:49AM
16 it.

17 Q But as it stands right now, to your knowledge, is
18 anybody out of compliance for what you do?

19 A To my knowledge, I'm not aware of that.

20 Q Do you have any idea of percentages as far as how 9:50AM
21 many might have a plan versus how many have one of
22 these letters on file where they're waiting for a plan?

23 A I wouldn't know. And the only reason -- the
24 reason is, is because a lot of the plans are starting
25 to expire. Each year now they're going to be expiring 9:50AM

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1 and they have to have a letter stating to update it, 9:50AM
2 that they've got to have their plan updated.

3 Q And does that also come from NRCS?

4 A Yes, sir.

5 Q Are there specific people in the -- let me ask 9:50AM
6 this first. The area that you described earlier that
7 you have responsibility for, the geographical area, are
8 there -- can you describe which counties that covers?

9 A The southern part of Delaware County, Cherokee
10 County, Adair County, Sequoyah County, Muskogee County 9:51AM
11 and McIntosh.

12 Q So it's the southern part of Delaware County and
13 the entire counties of the others you listed?

14 A Yes, sir, correct.

15 Q Do you know who the people are with the NRCS in 9:51AM
16 each of those places? Do you have contact with them in
17 any way where you know who they are?

18 A Just the Adair County NRCS, I'm more familiar
19 with.

20 Q And why is that? 9:51AM

21 A We do a lot of education classes in Adair County
22 and they attend a lot of education classes that O.S.U.
23 puts on. I attend those classes in that county and
24 NRCS people are usually there helping so I'm more
25 familiar with them. 9:51AM

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1 Q These classes that O.S.U. puts on that you attend, 9:51AM
2 is this something separate from the courses or classes
3 or whatever that Mr. Parrish sometimes summons you to
4 Oklahoma City for?

5 A Correct, yes, the class that O.S.U. puts on is the 9:52AM
6 classes that is required by law that the poultry
7 applicator and grower have to attend.

8 Q And they have to attend that how often?

9 A They have to attend a nine-hour class the first
10 year they're in business and then they have to attend a 9:52AM
11 three-hour class each year after that.

12 Q And when I asked you earlier whether, to your
13 knowledge, any -- all of the growers that you, that you
14 have responsibility for were current as far as their
15 records go, would that include these educational 9:52AM
16 requirements?

17 MR. GRAVES: Hello.

18 MR. GEORGE: Hello, Robert George.

19 Q Would that include the educational record for the
20 educational requirements? 9:53AM

21 A You know, I would assume it does right now unless
22 they're a new grower and they have one year to get that
23 so they -- and they have from the time they sign up to
24 be a poultry grower, they have one year to get their
25 nine hours. And then if -- they have until December of 9:53AM

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1 this year to get their three hours update of a current 9:53AM
2 grower that needs three hours so as of right now, I'm
3 not aware of anybody that's needing -- that's behind.

4 Q Okay.

5 A As long as they get three hours before December. 9:53AM

6 Q And those courses are usually put on in Adair
7 County, you said?

8 A Well, they're put on all over Oklahoma, up and
9 down.

10 Q I mean in your geographic area? 9:53AM

11 A It seems like it. But -- well, they'll have some
12 more maybe in Sequoyah County, one in Muskogee County,
13 one in Cherokee County, but it seems like we have, you
14 know, more than -- more in Adair County.

15 Q And this all started, I had asked you about your 9:54AM
16 familiarity with the different folks with NRCS in each
17 of the counties and you said you pretty much only knew
18 the one in Adair County?

19 A Right.

20 Q Who is that? 9:54AM

21 A Andy Inman.

22 Q When those courses are put on, do you have any
23 role to play as far as educating the growers? Do you
24 actually do anything or say anything there?

25 A No, no. I mean, O.S.U. is the one who puts on the 9:54AM

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1 education classes and they'll bring some guest speakers 9:54AM
2 to talk about certain topics, but I'm not a guest
3 speaker. Sometimes the educator will ask, because I'm
4 there, and he'll mention that the poultry inspector is
5 here because it's poultry growers and applicators 9:54AM
6 that's in that room, that David Berry with the
7 Department of Ag is here and ask me if I have anything
8 to say. And if I do, it's just to remind them of,
9 depending on what time of the year it is, you know,
10 make sure you get your soil litter test and, you know, 9:55AM
11 so forth. It's not educating.

12 Q Okay. Apart from these -- from these O.S.U.
13 courses, are there times where you would, in fact,
14 actually be involved in any type of educational
15 situations or seminars for growers? 9:55AM

16 A At these classes?

17 Q At any time. You've already told me what you do
18 at these classes, but I'm just asking generally.

19 A Repeat the question then, I'm sorry.

20 Q Generally, do you ever yourself have 9:55AM
21 responsibility for standing up and educating poultry
22 growers on anything?

23 A No.

24 Q Other than what you just described?

25 A No, I don't, I don't. 9:55AM

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1 Q Okay. If a poultry grower were to ask you 9:55AM
2 something that you felt fell within the educational
3 area, what would your response be?

4 A Educational area of what?

5 Q If they were just asking you a question that you 9:56AM
6 felt like -- as opposed to -- maybe I should ask you,
7 we'll strike that and I'll start over.

8 You've mentioned technical assistance as
9 one of your areas of responsibility?

10 A Correct. 9:56AM

11 Q What do you consider technical assistance to
12 encompass?

13 A If they have a question about soil testing, litter
14 testing, education, what they can and can't do.
15 Anything of technical assistance, to me, would be 9:56AM
16 anything that I'm there to regulate them over to help
17 them understand.

18 Q Okay. And so do you actually -- would you
19 actually explain to them how to do a soil test or would
20 you just tell them where to go? 9:56AM

21 A I'd tell them where to go.

22 Q Okay. The same thing with regard then to my
23 initial question about education. If I had a question
24 as a poultry grower about education related to poultry
25 growing, where would you -- where would you point me or 9:57AM

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1 what would you say? 9:57AM

2 A O.S.U.

3 Q Okay. The people who write the plans in the
4 various counties for the NRCS, do you know what their
5 position or title is there? 9:57AM

6 A No, I don't.

7 Q Okay. In the job duties that you've described and
8 I'm not -- I don't want you to think I'm being flip, I
9 just want to ask how you learned that these were the
10 job responsibilities. Was it just through the ride 9:58AM
11 along with Brett, I can't remember his last name?

12 A Well, there's a poultry Act, poultry law that has
13 rules that we have a copy of.

14 Q And have you reviewed that thoroughly, that
15 poultry Act and the rules that accompany it? 9:58AM

16 A I haven't read it from front to back. I'm
17 familiar, if I have a thought or something that I want
18 to know, I'll flip through it and look through it and
19 read through it. I've never had a test to sit down and
20 have to take over and pass it but I'm pretty familiar 9:58AM
21 with it.

22 Q Okay. Any other sources of information that allow
23 you to know what your job responsibilities are other
24 than being able to consult the poultry Act and having
25 ridden along with the previous poultry inspector for a 9:59AM

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1 year or two? 9:59AM

2 A My director.

3 Q Mr. Parrish?

4 A Yes.

5 Q Is he a -- by that are you saying he's somebody 9:59AM
6 you can consult?

7 A If I have a question that's who I ask. If I don't
8 understand, that's who I ask.

9 Q Okay. Any other sources of information for your,
10 for your job role or job description? 9:59AM

11 A No, no.

12 MR. GRAVES: This is probably a good time
13 to take a break.

14 THE VIDEOGRAPHER: We are now off the
15 record. The time is 9:59 a.m. 10:00AM

16 (Following a short recess at 9:59 a.m.,
17 proceedings continued on the record at 10:10 a.m.)

18 THE VIDEOGRAPHER: We are back on the
19 record. The time is 10:09 a.m.

20 Q Mr. Berry, you had described your job duties 10:10AM
21 generally speaking, I think, as falling within
22 inspections, complaint investigations and technical
23 assistance?

24 A Correct.

25 Q With regard to the inspections, the first, I guess 10:10AM

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1 I'll call them part of that job responsibility area, 10:10AM
2 you have talked about a checklist that you fill out and
3 I was going to show you what I've marked as Exhibit 1
4 and ask you if this is an example of the type of
5 inspection checklist that you complete on an annual 10:10AM
6 basis? And you can take your time and look at that.
7 I'm not asking you if that's one you actually filled
8 out, but if that's the type of form?

9 A That's the three page inspection form that we fill
10 out annually. 10:11AM

11 Q For an annual inspection?

12 A Yes, sir.

13 Q And you do one of those for each poultry farm?

14 A Yes, sir.

15 MR. GRAVES: That was marked as Exhibit 1. 10:11AM
16 There's copies for everybody.

17 Q Is there any other form that you would complete at
18 the annual inspection besides this three page what's
19 identified as the Oklahoma Registered Poultry Feeding
20 Operation and Checklist, is there any other form that 10:11AM
21 you fill out when you go out to a farm each time?

22 A This is the only one that I fill out when I do the
23 inspection.

24 Q Okay. I was going to show you what's been marked
25 as Exhibit 2 and it's got a title called Poultry Annual 10:11AM

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1 Inspection Checklist on it and ask you what that is and 10:11AM
2 whether that's something that you ever fill out?

3 A This ain't something that I fill out.

4 Q This one is signed by, looks like, Mr. Parrish.

5 Have you have seen one of these before? 10:12AM

6 A You know, not that's been sent to me directly that
7 I've seen. I think I've probably seen something like
8 this.

9 Q Okay.

10 A I'm assuming that this is a checklist that 10:12AM
11 Mr. Parrish has that when our inspection sheets come in
12 it appears that that's what he reviews to see if it's
13 correct on the inspection.

14 Q Well, I don't want you to have to guess or assume.

15 A No, I don't. 10:12AM

16 Q That's not a form you deal with?

17 A I don't fill that out. No, I don't.

18 Q All right. I won't make that an exhibit since
19 you're not familiar with that form. So just to clarify
20 then this three-page report is the only thing you 10:12AM
21 really deal with on an annual inspection?

22 A Correct.

23 Q Do you transmit that form anywhere once it's
24 filled out?

25 A Like send it somewhere? 10:13AM

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1 Q Right. That's a much simpler word than 10:13AM
2 transmitted, isn't it?

3 A It is for me.

4 Q That's what I should have used.

5 A Here at the bottom it says original goes to the 10:13AM
6 office, the yellow copy would go to the inspector,
7 which I keep, and then the pink copy the grower keeps.
8 So there's -- to each page there's three pages, they're
9 carbon, so when I fill out the top page it carbons the
10 next two. 10:13AM

11 Q Okay. And are you the person who actually makes
12 sure that all those different copies get to where it's
13 indicated at the bottom they go?

14 A Correct. I fill out the top page when I get back
15 home. At some point in time that week I'll box mine up 10:13AM
16 that I did, send them to Oklahoma City, the original
17 copy. Before I leave the poultry operation, I make
18 sure that I've left their copy for their records and
19 then I keep a copy.

20 Q Do you actually mail that back to the grower then? 10:13AM

21 A No, I leave the copy with the grower.

22 Q You fill this out on site?

23 A Yes, sir, I do.

24 Q Okay.

25 A And the poultry grower has to sign it that I was 10:14AM

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1 there. 10:14AM

2 Q Okay.

3 A And then the copy that goes to the office gets
4 mailed and then the copy that stays with the grower I
5 leave it with him. 10:14AM

6 Q And who's the addressee when you mail those? I
7 mean, who are you sending them to at the office?

8 A I mail mine to the Department of Ag.

9 Q There's not attention somebody?

10 A No, sir, there's not. 10:14AM

11 Q Okay. Do you know who gets those forms?

12 A No.

13 Q Who receives them?

14 A No, I do not.

15 Q And we've already talked about what you look for 10:14AM
16 when you do an annual inspection, you're looking at the
17 records for education for soil test, for litter tests
18 and if they've got a plan, correct?

19 A Correct.

20 Q And then also what they've done with their litter? 10:15AM

21 A Correct.

22 Q Anything else that you're looking for out there on
23 your annual inspection?

24 A On my annual inspection I'm doing the
25 recordkeeping inspection and that's what I check for. 10:15AM

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1 Q Okay. So we've covered that, right? 10:15AM

2 A Yes, sir.

3 Q Okay. With regard to complaint investigation,
4 which is another area, a separate area that you've
5 talked about as part of your job responsibilities. How 10:15AM
6 does the process work? In other words, how do you find
7 out that there's been a complaint?

8 A Our office calls me and notifies me of a
9 complaint.

10 Q Do you mean somebody in Oklahoma City? 10:15AM

11 A Yeah, from Oklahoma City from the Ag building,
12 from our division will contact me.

13 Q Do you ever receive any complaints directly?

14 A I've had maybe a few people that's called me
15 directly wanting to complain and I can't take the 10:15AM
16 complaint so they have to call Oklahoma City and file
17 it with Oklahoma City and then it comes back to me.

18 Q So if someone were to call you directly, is the
19 reason that they call you just because they know what
20 your position is with the Department of Agriculture? 10:16AM

21 A I assume. It's not somebody that I know. I
22 leave -- I mean, my cards out at the farms and I assume
23 somehow they found how to get in touch with me, that
24 I'm the inspector and maybe they don't know to call
25 Oklahoma City or the protocol of how to file a 10:16AM

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1 complaint so they'll call me. And it's not very often 10:16AM
2 but occasionally somebody will call me and want to
3 complain and I can't take the complaint, they have to
4 call Oklahoma City, get the details and whatever
5 they're going to do and then Oklahoma City assigns it 10:16AM
6 to me.

7 Q If it's in your territory?

8 A If it's in my territory.

9 Q Do you ever have a reason to investigate anything
10 outside of your territory? 10:16AM

11 A No, sir.

12 Q And that's the territory that you've already
13 described, correct?

14 A Yes, sir.

15 Q So if someone were to call you directly with a 10:17AM
16 complaint, you're just going to give them a telephone
17 number in Oklahoma City to call?

18 A Yes, sir.

19 Q Is there a particular person in Oklahoma City that
20 receives those complaints? 10:17AM

21 A Not that I'm aware of. There's a complaint, I
22 think they call it -- I don't know if they call it the
23 hotline or not, but it's a complaint line that they
24 call in to and who answers that phone call, I don't
25 know. 10:17AM

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1 Q So with regard to anything that you would actually 10:17AM
2 go out and investigate, it's going to be the result of
3 someone from Oklahoma City communicating with you that
4 you need to go do that?

5 A Yes, sir. 10:17AM

6 Q What types of complaints would you normally be
7 assigned to investigate, I mean typically?

8 A What types of complaints have I investigated?

9 Q Sure.

10 A I've done fly complaints, odor complaints. 10:18AM

11 Q What was the first one, I'm sorry?

12 A Fly.

13 Q Fly?

14 A Fly. Fly complaint, odor complaint, maybe
15 improper carcass disposal as a general area. 10:18AM

16 Q Are those the most frequent types of complaints
17 you get?

18 A You know, I don't know which one -- I don't know
19 how frequent they are, but those are the general areas
20 of what a complaint usually states is it's a fly 10:18AM
21 problem, an odor problem or could be a carcass disposal
22 problem. The people complaining will, you know, say
23 that.

24 Q As you sit here now, are there any other types of
25 complaints that maybe aren't as frequent that you can 10:19AM

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1 remember that you've had to go out and investigate for? 10:19AM

2 A Pile litter, stacked litter.

3 Q That's a less frequent one?

4 A No, I probably should have put it in with those.

5 Q Okay. Any others? 10:19AM

6 A Not that I can think of. There possibly could be,
7 but not that I can think of right now.

8 Q How often would you receive a complaint that
9 you've got to go investigate?

10 A I don't know. This year hasn't been as busy. I 10:19AM
11 don't know the number of complaints I go on in a year.
12 They're sporadic.

13 Q I'm just trying to get a feel for you. Do you
14 feel like you're out investigating one every week or is
15 it less frequent? 10:20AM

16 A No, sir, it's less frequent than that.

17 Q Are there any particular geographical areas where
18 you seem to get -- within your territory where you seem
19 to get more complaints?

20 A No. It seems like it just covers my whole area. 10:20AM

21 Q Okay. Are there any particular times of the year
22 when you seem to get more complaints?

23 A They're so sporadic, I would say that it's just
24 throughout the year. There's never really -- there's
25 not, I would say a season for complaints, it's 10:20AM

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1 sporadically throughout the year. 10:20AM

2 Q When you receive a complaint that's an assignment
3 from Oklahoma City, what is your first step? Just kind
4 of take me through the process of what you do.

5 A A complaint can come in anonymous or somebody. 10:21AM

6 Whoever's complaining, can leave their name or they --

7 or not. It can be an anonymous complaint or somebody

8 can leave their name. If it's somebody that left their

9 name, I go and find them and interview them and go over

10 the complaint details that I have and then -- and, you 10:21AM

11 know, they tell me, you know, go more in-depth, if you

12 will. And then I go and investigate the actual

13 complaint on the site where it's at. If it's an

14 anonymous complaint, obviously, I don't have somebody

15 to go interview so I just go straight to the site. 10:21AM

16 Q Okay. If it's a complaint about flies or odor,

17 how would you address those kinds of complaints, if you

18 get there and --

19 A Once I get to the site, you know, we'll look at

20 the odor complaint. I'll, I try to -- I go, basically, 10:22AM

21 if I can, at least a quarter of a mile in each

22 direction, north, east, south and west of the site and

23 then work my way in evaluating the air, the odor, if

24 you will, to how strong it is.

25 Q Is that just using your nose or do you have 10:22AM

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1 equipment that you're using? 10:22AM

2 A No, I have to use my nose.

3 Q Okay.

4 A And then once I get to the site, where it's
5 supposed to be originating from, I look for the 10:22AM

6 problem, you know, what is causing the odor. The
7 complainant normally doesn't say -- it will just say
8 the chicken houses are stinking or something. They
9 don't say any more details than that so I look for a
10 variety of what could be causing it, you know. Like is 10:23AM
11 the composter, is that the problem? Is there piled
12 litter outside that's causing the problem? You know,
13 what could be causing that problem.

14 Q Is there always a problem? I mean, you've been
15 around animals, I mean, they have an odor associated 10:23AM
16 with raising animals, don't they?

17 A I don't. I don't. On an odor complaint, it's
18 normally coming from the fans from the poultry barn
19 that got kicked on because of the ventilation. I
20 see -- sometimes on some of my complaints on an odor 10:24AM
21 complaint would be where the birds have just went out.

22 And if the barn has curtains, the curtains are dropped
23 and the fans are on trying to, you know, ventilate the
24 house a little better. Or somebody is tilling the
25 floors. You know, they've stirred up the dust in the 10:24AM

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1 barn, if you will. 10:24AM

2 Q What would be a situation -- well, strike that.
3 Has there ever been a situation where you've gone out
4 on an odor complaint and found that there was some type
5 of violation of the regulations that you are 10:24AM
6 responsible for enforcing?

7 A Not recently.

8 Q What would be the type of situation where there
9 would be something that you would find was a violation?

10 A If their composter was not working properly. And, 10:25AM
11 again, I don't know if that would be a violation
12 because I don't assess violations to people, but if
13 their composter was full and I felt like that it needed
14 to be cleaned out, that maybe it was, if you will,
15 getting kind of too nasty and could be creating an odor 10:25AM
16 or, you know, the fly problem, I'll suggest to have
17 it -- that it might need to be cleaned out. Assuming
18 that that may not be a violation, but that would be in
19 my report, a suggestion. I would be looking for if
20 there was litter piled outside, which, again, I don't 10:25AM
21 assess the violation, but to me, if it is stacked
22 outside, it has to be covered or burned, protected from
23 the waters of the State.

24 Q Who would decide whether what you've written in a
25 report is, in fact, a violation? 10:25AM

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1 A I would assume my boss. 10:26AM

2 Q And that's Mr. Parrish?

3 A Right. That's who, that's who I think would tell
4 me if there's a violation.

5 Q And so you're just writing up a report that 10:26AM
6 contained what you found?

7 A Yes, sir.

8 Q And allowing Mr. Parrish to evaluate that
9 information?

10 A Yes, sir, correct. 10:26AM

11 Q To your knowledge, is there anything in the -- in
12 any of the Acts that, that set a distance or an amount
13 of odor or how far an odor can, can travel, for lack of
14 a better term, from a poultry barn?

15 MS. WEAVER: Object to form. 10:26AM

16 A I don't, I don't know of anything in the Act about
17 odor.

18 Q Okay. In other words, just some standards?

19 A I don't know of anything.

20 Q You also mentioned improper carcass disposal? 10:27AM

21 A Yes, sir.

22 Q Have there been occasions when you've found that
23 someone was improperly disposing of carcasses or that
24 you've reported that in your report?

25 A Not on chicken farms. 10:27AM

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1 Q Okay. Do you have any type of idea how many times 10:27AM
2 you found that someone in your report or reported that
3 someone may have improperly stacked litter outside?

4 A Have I found litter?

5 Q Right. 10:27AM

6 A Yes, sir, I have.

7 Q Do you have any estimate of how many times that's
8 occurred?

9 A No, I don't.

10 Q You've mentioned that the complaints in general 10:27AM
11 are relatively sporadic so I'm just trying to get an
12 idea of how many times within that you've actually
13 found that someone had possibly --

14 A Correct.

15 Q -- been in violation of the Act? 10:28AM

16 A I couldn't tell you a number.

17 Q Okay. Do you have any idea or estimate of what
18 percentage of the time that you're asked to go
19 investigate that you actually found that there's
20 something true to the complaint? 10:28AM

21 A I don't know a number, but it's not very often.

22 Q And I think you implied by our discussion about
23 who would actually assess the information you put in
24 your report, but I wanted to ask you who did you turn
25 your reports in to when you go investigate a complaint? 10:28AM

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1 A To Dan Parrish. 10:28AM

2 Q Are these reports written?

3 A They're written on a computer.

4 Q In every case? I mean, it's not -- there aren't

5 occasions when you would just verbally report what you 10:29AM

6 found?

7 A No.

8 Q Okay.

9 A There is times that I will call Dan and tell him

10 my findings, but I have to put it in writing. 10:29AM

11 Q So there are times when you just call him and tell

12 him what you had seen but you would still follow that

13 up with something in writing?

14 A I have to follow it up with writing.

15 Q Do you do a written report regardless of what the 10:29AM

16 outcome of the investigation is? That is, whether you

17 found that there's truth to the investigation or found

18 that there's not truth to it?

19 A Right. I give a written report on every complaint

20 I go on. 10:29AM

21 Q Have any of your complaint investigations ever

22 dealt with litter applicators as opposed to poultry

23 growers?

24 A Has my complaints dealt with litter applicators?

25 Q The complaints you've investigated. 10:30AM

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1 A Yeah, yes, they have. 10:30AM

2 Q And what would be the types of complaints you
3 would get with regard to litter applicators?

4 A That would be just, basically, the litter that has
5 been piled outside that has been hauled into a field 10:30AM
6 and the applicator hadn't yet spread it.

7 Q So does that fit within the litter stacking
8 complaints that you mentioned earlier?

9 A Yes, sir.

10 Q When you get a litter stacking complaint, is it 10:31AM
11 more often with regard to a litter applicator as
12 opposed to a grower?

13 A Yeah, yeah, yes, it would be.

14 Q And how would you handle -- how would you handle
15 the -- your findings and your reporting with regard to 10:31AM
16 finding litter piled outside by an applicator?

17 A Can you repeat that?

18 Q I'll ask a better question. Would your method of
19 the evaluating and reporting be the same with regard to
20 a complaint on a litter applicator as it is with a 10:31AM
21 poultry grower?

22 A Yes, I approach it the same.

23 Q Are the persons that are being investigated, are
24 they notified in any way before or after that you've
25 conducted an investigation or that there has been a 10:32AM

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1 complaint about them? 10:32AM

2 A The complaint investigations I do are unannounced.
3 They're -- nobody knows that I'm coming until I show
4 up.

5 Q When you get there, though, are you advising them 10:32AM
6 that you're there to investigate?

7 A Why I'm there, yes.

8 Q In other words, you don't just go out there and
9 start looking around and not tell anybody?

10 A If nobody is there I still do my investigation but 10:32AM
11 if I can -- I prefer to find somebody that owns the
12 land or the responsible party so I don't get shot at.

13 Q That's a good practice, I think. What about with
14 regard to a complaint against the litter applicator?
15 Seems to me since they've just, perhaps, stacked it and 10:32AM
16 not spread it yet, are they going to be somebody that's
17 out there for you to actually visit with about your
18 investigation?

19 A They're tougher to find. I say "tougher to find,"
20 you know, I just have to find the landowner and then 10:33AM
21 the landowner tells me who the applicator, you know, is
22 going to be and then I can just backtrack it from
23 there.

24 Q And is that what you do? Do you go out and speak
25 to the litter applicator at some point? 10:33AM

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1 A Uh-huh, yes. 10:33AM

2 Q What is the -- what's that discussion about?

3 A Well, with a landowner, it's to cover that litter
4 or vermin around there so it can't run off until my
5 applicator can get there. I say "my applicator," until 10:33AM
6 the applicator can get there to spread it. Once the
7 landowner understands what he's got to get done then I
8 contact the applicator and find out, you know, why,
9 which is irrelevant to my investigation, why he hadn't
10 spread it, but to find out when he's going to get out 10:34AM
11 there to get it spread and then I try to have him move
12 it up his list to get it done --

13 Q Okay.

14 A -- quick.

15 Q Are you ever called upon to investigate properties 10:34AM
16 that do not have poultry growing operations on them?

17 A On a complaint, some of the litter goes to places
18 that's not poultry operations.

19 Q And so if someone called Oklahoma City and
20 complained that a piece of property that doesn't have 10:34AM
21 poultry operations on it was getting litter and had an
22 odor problem, that might be something that would still
23 get assigned to you even though there was no poultry
24 barns on that property?

25 A Right. If it has to do with chickens or chicken 10:35AM

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1 litter and it's in my territory, I go on it. 10:35AM

2 Q Are any of these litter applicator complaints that
3 you get that we've talked about then on land that
4 doesn't have poultry growing operations on it?

5 A Repeat that for me? 10:35AM

6 Q Is it the case that some of these litter
7 applicator complaints that you get where litter has
8 been stacked and not yet spread, that it's actually on
9 land that a poultry grower -- that there's no poultry
10 growing operations on? 10:35AM

11 A Correct, it's somebody that's bought poultry
12 litter and wanted it spread on their place and then
13 they've hired an applicator to come spread it.

14 Q Who determines the final outcome of your
15 investigation of a complaint? 10:36AM

16 A I would assume Dan Parrish, my boss.

17 Q Do you know whether there's any type of written
18 communication that comes from Mr. Parrish with regard
19 to the outcome of an investigation like that?

20 A There's a letter written from Dan to the person 10:36AM
21 complained against and the person who -- if they left
22 their name. If it was anonymous, they get a letter
23 also stating the finding of the report.

24 Q Okay. Do you do anything else as a part of your
25 complaint investigation process other than what we've 10:36AM

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1 already talked about? 10:36AM

2 A All I do is I go out and investigate, write down
3 my findings and send it to Dan and that's all I do.

4 Q You mentioned that you write these on a computer?

5 A Uh-huh. 10:37AM

6 Q Is there a specific form that you use or is it --

7 A No, it's my own home personal computer and I hate
8 writing reports and let alone handwriting it, I just
9 found it easier to put it on my computer and hit spell
10 check and send it to Dan. 10:37AM

11 Q I think you mentioned that when you're assigned a
12 complaint to investigate that it's telephoned to you.
13 Do you ever get it in writing, an assignment in
14 writing?

15 A Yes, I do. 10:37AM

16 Q Is it always in writing?

17 A Yeah, I have to -- the office will call me to let
18 me know that I have a complaint. And then
19 theoretically it's usually that afternoon or evening
20 when I get home from work that I can get it because I 10:37AM
21 get it either faxed or e-mailed to me. And from there
22 I just print my copy off and go investigate it the next
23 day.

24 Q And I have got a document here that's been marked
25 as Exhibit 3 to the deposition that looks to me like 10:37AM

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1 what you may be talking about, but I just wanted you to 10:38AM
2 look at it and see if that's the type of form you would
3 get where you're being assigned something to go
4 investigate?

5 A This is what I print out right here. This is 10:38AM
6 what's mailed to me from our office.

7 Q Okay. And do you know who sends those?

8 A You know, I'm not real sure because I think, I
9 think they have to do something to be able to e-mail it
10 to me so I'm not real sure who actually sends it to me. 10:38AM

11 Q Is this a version of an e-mail form?

12 A This would be -- could be -- this would be a fax
13 form or an e-mail form. This is the complaint document
14 that we would all get.

15 Q Do they look the same either way -- 10:38AM

16 A Yes, sir.

17 Q -- whether you get them by fax or e-mail?

18 A Yes, sir, that I believe. It's been so long that
19 I've gotten a fax.

20 Q During the time that you worked for the Department 10:38AM
21 of Agriculture, is this the -- is this what the forms
22 look like when you get an assignment?

23 A I believe so, I believe so.

24 Q You also discussed that Mr. Parrish sends out a
25 letter to the complainant and if it's not an anonymous 10:39AM

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1 complaint? 10:39AM

2 A Uh-huh.

3 Q I mean, they'll send it out to the person that's
4 been investigated and also to the person who made the
5 complaint if it's not anonymous? 10:39AM

6 A Yes, sir.

7 Q And I'll show you what's been marked as Exhibit 4
8 and ask you if this is an example of one of those types
9 of letters?

10 A This appears to be the letter that the complaint, 10:39AM
11 the person that complained would receive before it was
12 investigated.

13 Q Okay. Is this acknowledging that a complaint has
14 come in?

15 A This letter does. 10:40AM

16 Q Is that also something that Mr. Parrish routinely
17 sends out?

18 A You know, I don't know if that's the protocol.
19 The one that I'm more familiar with is a letter similar
20 to this that would be to this person stating whether 10:40AM
21 there was a violation found or not.

22 Q This one is dated 2005, February of 2005, so do
23 you think it's the case that since then the protocol
24 has changed and there's not an initial letter that goes
25 out acknowledging the complaint? 10:40AM

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1 A You know, I'm not sure whether this is still done 10:40AM
2 or not.

3 Q On this particular Exhibit 4, you're actually cc'd
4 it, right?

5 A Yeah, I am. 10:40AM

6 Q Right here. Are you cc'd on those kinds of
7 letters any more?

8 A The letters that I get from the office that are on
9 my complaints I get a copy.

10 Q I asked a bad question. Do you still get copies 10:40AM
11 of a letter that goes out to someone when they first
12 receive a complaint?

13 A I believe I'm supposed to.

14 Q All right. I think I'm getting confused now.

15 Mr. Parrish sends out a letter. I understand 10:41AM
16 Mr. Parrish sends out a letter after you've
17 investigated a complaint?

18 A Correct.

19 Q Exhibit 4 appears to be a letter that went out
20 before you've investigated a complaint? 10:41AM

21 A Correct.

22 Q And I think your testimony was you don't think
23 they do that any more. I'm just trying to verify that,
24 verify your memory of that. Do you know whether you're
25 still getting copies of initial letters? 10:41AM

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1 A I don't believe I'm getting this initial letter. 10:41AM

2 Q Do you have any idea when you stopped receiving
3 copies of an initial letter that goes out to the
4 complainant?

5 A No. 10:41AM

6 Q And do you have any idea why that might have
7 stopped, that practice?

8 A No.

9 Q When you're copied on a letter from Mr. Parrish
10 regarding a complaint, whether it's before a complaint 10:42AM
11 or after a complaint, do you keep those?

12 A No, I don't.

13 Q What do you do with those?

14 A I throw them in the trash.

15 Q Did you keep them for any period of time? 10:42AM

16 A No.

17 Q Before throwing them away?

18 A No.

19 Q Do you keep the e-mails or faxes where you're
20 initially assigned a complaint? 10:42AM

21 A No.

22 Q What do you do with those?

23 A They're -- I don't keep them on my computer and
24 once I e-mail it to Dan, the office has my report so I
25 have no need for it. 10:42AM

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1 Q When you get an e-mail assigning you a complaint, 10:42AM
2 do you ever reply to that e-mail?

3 A There's no need to. Once it's to me, I check on
4 it to get to that part that you showed me a minute ago,
5 Exhibit 3, I believe. 10:43AM

6 Q Right.

7 A Once I get it opened up to there, I print it off
8 and then I just delete it off my computer.

9 Q Did you keep printouts?

10 A I keep the printouts until I've investigated my 10:43AM
11 complaint and then once the complaint has been closed
12 then I, you know, I don't need it no more.

13 Q Did you ever reply to the e-mail just to say I got
14 the e-mail and I'm working on it or anything like that?

15 A No, no. 10:43AM

16 Q Do you maintain any documents that relate to your
17 position with the Oklahoma Department of Agriculture on
18 your computer?

19 A No. The only document I keep is the inspection
20 sheet that I do each year on the farm. That's all I 10:43AM
21 keep.

22 Q Has anybody asked you to search through your desk
23 or your e-mails or your computer or anything to make
24 sure you don't have any records that relate to growers
25 or complaints? 10:44AM

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1 A No. 10:44AM

2 MS. WEAVER: Object to form.

3 A No.

4 Q Did you understand my question?

5 A That somebody has asked to look through my 10:44AM
6 records.

7 Q Has anybody asked you to look through your
8 records?

9 A No.

10 Q Have you provided any documents to anyone as a 10:44AM
11 part of this case?

12 MS. WEAVER: Object to form.

13 A Provided any documents?

14 Q Have you provided documents to any lawyers or to
15 Mr. Parrish or anyone else? 10:44AM

16 A No.

17 Q Relating to this lawsuit?

18 A No.

19 MS. WEAVER: Same objection.

20 Q Did you understand my question? 10:44AM

21 A Have I provided documents or paperwork to somebody
22 else providing what I do, I guess what I'm here for
23 today? I haven't, other than my daily routine of, you
24 know, if I got a complaint, I mean, I haven't sent
25 nobody nothing. 10:44AM

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1 Q Okay. I think the last Exhibit 4 was an example 10:44AM
2 of whether or not it's still a current practice an
3 initial letter that went out to someone who had
4 complained. Exhibit 5 looks to me like maybe one of
5 your reports, but I'll have you look at it and tell me 10:45AM
6 whether that's the case. I'm not asking you any
7 specifics about this particular investigation, I'm just
8 asking you if this is an example of what you would do
9 on an investigation, the type of report you would
10 complete. 10:45AM

11 A It's pretty much it. It's a little longer than
12 normal but that's pretty much it.

13 Q Is that the form it's typically in, that is, the
14 complaint number and date?

15 A It's not a form. I just go into Word and put 10:45AM
16 my -- that's how I do it.

17 Q Right, the format?

18 A Format.

19 Q I didn't mean to suggest that you were given a
20 particular form to complete? 10:45AM

21 A Yes, yes.

22 Q This is the format you usually use?

23 A That's the format I try to use, yes, sir.

24 Q Did you mail this or e-mail that?

25 A I e-mail that. 10:46AM

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1 Q Who do you e-mail it to? 10:46AM

2 A I send it to Dan.

3 Q Okay. So it's an e-mail addressed to Mr. Parrish?

4 A Yes.

5 Q Have you, sir, ever been asked to take any soil 10:46AM
6 samples or water samples as part of any investigation?

7 MS. WEAVER: Object to form.

8 A I've had to take soil samples occasionally, you
9 know, on a complaint at the request of Mr. Parrish.

10 Q What would be the situation in a complaint where 10:47AM
11 you would be called upon to take soil samples?

12 A I don't know. I do it under the direction of Dan
13 Parrish so I don't --

14 Q How many times has Mr. Parrish asked you to take
15 soil samples? 10:47AM

16 A I don't know a number.

17 Q I mean, is it ten times, 20 times, I'm just asking
18 for a ballpark?

19 A I don't have a ballpark number. I've been asked
20 to do it. I've been directed to it and to perform that 10:47AM
21 duty, but I don't know the number of times I've done
22 it.

23 Q Okay. I guess I'm trying to find out if this is
24 something that's routine or whether it's just that --

25 A It's nothing routine. It's just if a complaint -- 10:47AM

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1 if Dan feels like there needs to be a soil sample took, 10:47AM
2 I suppose he directs me to do it, but how many times
3 I've done that, I don't know.

4 Q Okay. And I guess that's what I'm getting at is
5 what would be the types of complaints, in your 10:48AM
6 experience, that have resulted in Mr. Parrish asking
7 you to take a soil sample?

8 A Well, I mean, obviously to take a soil sample on a
9 complaint would be somebody feeling like somebody has
10 over land applied. 10:48AM

11 Q Do you remember any specific growers or farms
12 where you've taken a soil sample?

13 A No. It's not necessarily a grower. I mean, a
14 complaint can be against a private landowner, too, so.

15 Q Right. In my question about specific farms, I was 10:48AM
16 not just asking about poultry farms?

17 A Okay.

18 Q Do you recall any of the results of the soil
19 samples that you took?

20 A No, I don't. 10:49AM

21 Q Would you have received the results?

22 A No, I wouldn't have.

23 Q What would you do with the soil sample once you
24 collected it?

25 A I'd deliver it to Stillwater to the O.S.U. soil 10:49AM

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1 lab. And there I fill out a chain of custody and it is 10:49AM
2 reported back to Dan from there.

3 Q With regard to the final outcome of a complaint, I
4 think you've testified that Mr. Parrish sends out a
5 letter to the person that was being investigated and, 10:49AM
6 if known, the person who complained?

7 A Correct.

8 Q Are you copied on that letter?

9 A Correct.

10 Q So if there had been an issue with a soil sample, 10:49AM
11 would you have been copied on those results? In other
12 words, would Mr. Parrish include those results in his
13 letter?

14 A You know, I'm not real familiar with his protocol
15 with that. I've never seen where I've got a letter 10:50AM
16 stating the findings of something when there was
17 something wrong. The only time that I've known a
18 letter to go out was once the complaint was being
19 closed. The letter doesn't, that I'm aware of, doesn't
20 go out to report the findings. If he feels like 10:50AM
21 there's something wrong, then the complaint stays open
22 and we further investigate. And until complaint is
23 closed, the letter doesn't go out that I'm aware of.

24 Q Okay. Well, let's back up and go over this then.
25 Mr. Parrish is going to send out a letter, but it's 10:50AM

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1 only going to happen when there has been some 10:50AM
2 resolution to the complaint?

3 A That I'm aware of.

4 Q And you're copied on that letter?

5 A That last letter that goes out that complaint is 10:50AM
6 being closed.

7 Q If some type of problem is found, in other words
8 there's truth found to an odor complaint, we'll use
9 that as an example.

10 A Okay. 10:51AM

11 Q If there's truth found to an odor complaint.
12 Would Mr. Parrish's letter state that in that final
13 letter that goes out?

14 A You know, the letter is basically going to say
15 that the complaint is being closed due to no violations 10:51AM
16 were found or corrective actions have been took and it
17 has been closed.

18 Q Does the letter state what type of corrective
19 action is being taken?

20 A Without looking at one, I couldn't tell you. 10:51AM

21 Q Okay. I would show you one. I'm not holding one
22 back on you. I would show you one if I had one handy,
23 but I don't, so. Have you ever seen one of these final
24 letters that Mr. Parrish sends out that closes a
25 complaint investigation including any information that 10:51AM

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1 there has been a violation found on a complaint about 10:52AM
2 over land applications or that land has been over
3 applied with litter?

4 MS. WEAVER: Object to form.

5 A Repeat the question to me? 10:52AM

6 Q I'll ask it like this: You have testified that
7 there has been complaints where someone has complained
8 that they believed that litter or that a piece of land
9 had been over applied?

10 A Okay. 10:52AM

11 Q Right?

12 A Yes.

13 Q Have you been asked to investigate that?

14 A Correct.

15 Q As a part of investigation on occasion you've been 10:52AM
16 asked to take a soil sample?

17 A On occasion.

18 Q Okay. Have you ever seen the final letter that's
19 gong out on one of those investigations?

20 A Once the complaint was closed. 10:52AM

21 Q And what's in that letter when the complaint is
22 closed? What does it say?

23 A I couldn't --

24 Q Generally speaking.

25 A I still -- I don't want to generally speak. I'd 10:52AM

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1 rather see it before I said it. I've seen them, but 10:53AM
2 I'm not -- I can't quote what it says.

3 Q All right. I think we're being a little bit
4 disingenuous here, but if you've seen a number of
5 these, I think you have an idea of what's contained in 10:53AM
6 those letters. Would it include information? A letter
7 like that include information about what the results of
8 a soil sample were? That is, there was truth to the
9 fact that there was over application or that, no, there
10 wasn't no over application? 10:53AM

11 A In the letter that I see, it doesn't state the
12 actual findings. It doesn't state the soil test
13 results in that letter.

14 Q Okay. I'm not asking whether it states the actual
15 numbers that were shown on a soil sample, I'm asking 10:53AM
16 whether it says in the final letter, yes,
17 Mr. Complainant, we found that litter had been over
18 applied on that field or, no, Mr. Complainant, we found
19 that there had been no over application?

20 MS. WEAVER: Object to form. 10:53AM

21 A You know, with you using those examples, I'm not
22 real clear how that letter is going to word, how it's
23 going to read.

24 Q Okay. Well, maybe we'll have to come back later
25 and get that question answered when I have an example 10:54AM

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1 of one of the letters. Move to the water samples. 10:54AM

2 Have you ever been asked to take water samples?

3 A No, I haven't. Well, I took one that I can
4 recall.

5 Q What was the occasion when you took a water 10:55AM
6 sample?

7 A It was a complaint.

8 Q What was the complaint?

9 A Again, I don't know the detail word for word, but
10 it was mainly a possible water contamination-type 10:55AM
11 complaint.

12 Q Do you remember any of the details of what type of
13 water contamination was being alleged?

14 A That their well was stinking and the water was
15 tasting bad. 10:55AM

16 Q And who were they complaining against?

17 A A poultry operation.

18 Q Do you remember which poultry operation?

19 A Ketkeo, K-E-T-K-E-O, I believe, is the last name.

20 Q And did you, yourself, take the water sample? 10:56AM

21 A No, I didn't. Dr. Sharazi was with me when we
22 took the water sample and we only took it from the
23 faucet in the house.

24 Q Do you know what the results of that water sample
25 were? 10:56AM

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1 A No, I do not. 10:56AM

2 Q Have you been trained in how to take a soil or
3 water sample?

4 A I've been to O.S.U. education classes where
5 they -- the initial nine hours where they show a 10:56AM
6 poultry grower how to take the soil test and that's
7 where I've learned my -- the water sample, I don't know
8 that I've had training.

9 Q Do you know what Dr. Sharazi did with the water
10 sample after he took it? Like where he took it? 10:57AM

11 A I assume that he took it back to our lab in
12 Oklahoma City to where they check the water.

13 Q So I take it, you were not the person who dealt
14 with that water sample once it was taken?

15 A No, sir. 10:57AM

16 Q Does the fact that a complaint or investigation,
17 that you opened an investigation in and of itself mean
18 that there's been a violation out there?

19 A Just because there was a complaint?

20 Q Right. 10:57AM

21 A I try to go open-minded. I try to approach
22 everything that it ain't nothing until I get there and
23 see what it is.

24 Q And I think you've already testified that more
25 often than not you don't find any violations? 10:58AM

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1 A It seems like, you know, that I don't find the 10:58AM
2 violations that the people are saying, that each
3 complaint is a complaint so I treat them equally,
4 whether I think there's got anything to do -- you know,
5 whether I think I'm going to find a finding or not. 10:58AM
6 Somebody has a problem and I try to go see if there is.

7 Q If somebody complains about litter being stacked,
8 are you also out there looking to see whether there's
9 an odor problem, too? In other words, are you looking
10 for other issues while you're there? 10:58AM

11 A Not necessarily. If somebody calls in that
12 they've got piled litter, then that's what I go take
13 care of.

14 Q We've also discussed a part of your job as
15 technical assistance, right? 10:59AM

16 A Correct.

17 Q And I think you've covered that to some degree,
18 but I wanted to have you just tell me specifically what
19 your understanding of technical assistance is, what
20 falls within technical assistance? 10:59AM

21 A My understanding is when I go out to help somebody
22 understand what the law is.

23 Q If a grower has confusion about the law, are you
24 someone they can call on then?

25 A Yes, I am. 10:59AM

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1 Q How often does that happen? 10:59AM

2 A They don't call on me that often for the simple
3 fact that I do see them at education classes, I do see
4 them at their inspections so most people don't have to
5 call that frequently. 11:00AM

6 Q What about if they have a question about their
7 farm management plan, are you someone that they can
8 call about this?

9 A Only to get direction to where to go to get it
10 done. 11:00AM

11 Q If they don't understand their farm management
12 plan, are you someone that they can talk to about that?

13 A No, I'm not.

14 Q Is that, again, something that you would point
15 them -- 11:00AM

16 A To the NRCS office, who wrote the plan.

17 Q Okay. Can you, yourself, right now just think of
18 some samples of what type of technical assistance
19 you've been asked to provide by a grower?

20 A Basically, it's just when is this soil test due. 11:00AM

21 A soil test has to be took before the first land
22 application or he sells his litter and sometimes they
23 get confused on the dates on the litter -- or the soil
24 test. And the soil test is good to calendar -- or good
25 from the year that -- from the time they take it, it's 11:01AM

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1 good 12 months from that point. And that's something 11:01AM
2 that I get questions on. Same way with the litter
3 test. They're education classes, they'll ask me, you
4 know, when is the next class, I need an education or I
5 think I do. And they call to see if I know of any 11:01AM
6 class schedules, which I usually get a schedule sent to
7 me just like they do in the mail once class schedules
8 are released, but some of them kind of get nervous and
9 they want to know and think I know.

10 Q And I think you've already testified at these 11:01AM
11 classes you're also available?

12 A To the grower if he has some questions for the
13 technical assistance part.

14 Q And that would -- would that again be soil test
15 information? 11:02AM

16 A That is the whole thing, you know. I mean, I
17 don't know how much of it -- the law. I mean, this is
18 what they got to do when they got a soil test, litter
19 test, you know, reporting it. If they're an
20 applicator, they might have an question about how to 11:02AM
21 fill out their applicator report form. Just that type
22 of question, just a general question.

23 Q Do growers ever call you with complaints? I'm not
24 talking odor complaints, but just general --
25

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1 UNIDENTIFIED VOICE: Conference. 11:02AM

2 MR. GRAVES: Hello.

3 MR. TUCKER: This is John Tucker.

4 Q With complaints or problems about their plan or
5 about understanding the Act? 11:02AM

6 A The grower may call me and they have a question
7 and then I'll schedule a time to come by and see him
8 and visit with him, you know, and know what his
9 question is about.

10 Q Have growers ever contacted you complaining about 11:03AM
11 getting a plan or having problems getting a plan?

12 A In my territory, I have not had nobody to have to
13 complain like that.

14 Q Okay. What areas are covered in the classes? I'm
15 talking about the educational classes that fall within 11:03AM
16 this area. What's covered in the nine-hour class that
17 a grower attends?

18 A It covers, basically, the -- I mean, there's a
19 section about our rules and regulations. There's a
20 section there about how to soil sample, litter sample. 11:04AM
21 There's a section in there about understanding their
22 Animal Waste Management Plan. I mean, there's more to
23 it, but that's about the gist of it. I mean, that's
24 probably not the gist of it, but, I mean, off the top
25 of my head that's what it covers, some of the things it 11:04AM

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1 covers. 11:04AM

2 Q When one of these classes is put on in your area,
3 do you typically attend that class?

4 A I try to.

5 Q With regard to the three-hour class, what's your 11:04AM
6 understanding of what's covered at that class?

7 A That's a variety of things. They try to relate it
8 back or it relates back to the poultry industry but it
9 might cover -- I mean, they have numerous topics that
10 they, in that three hours, they'll use numerous topics 11:04AM
11 about weed management or pesticide. I mean, but
12 they'll relate some time through the course, some back
13 through the poultry.

14 Q And is Oklahoma State the one that puts these
15 programs on in all cases? 11:05AM

16 A Oklahoma State University is the ones who put on
17 the classes.

18 Q But it's your understanding that the Act that you
19 use as a source for your job every day, that part of
20 that Act requires those growers to go to those classes, 11:05AM
21 right?

22 A The grower and applicator have to attend at least
23 a three-hour class each year.

24 Q Do you know whether any types of documents or
25 slide shows or any of that type of information is 11:05AM

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1 provided to the growers at these classes, handouts? 11:05AM

2 A Yeah. I mean, all the classes usually have a
3 slide show and hand outs that go along with their
4 topics that they're doing that day.

5 Q Are you provided with any of that information when 11:06AM
6 you're in attendance?

7 A Yeah. I mean, you can pick up a copy. I mean, it
8 gets passed around the room.

9 Q What do you do with those documents whenever you
10 have them passed around to you? 11:06AM

11 A I either help pass them around the class, but
12 when -- I mean, I don't -- that's all I do with them.

13 Q I mean, do you maintain a copy of the type --
14 those types of educational documents?

15 A The documents at the class that day? 11:06AM

16 Q Right.

17 A No. I mean, I'll sit and read it that day and
18 listen to what they're talking about, but I don't -- I
19 don't want to -- I don't carry it home with me.

20 Q Okay. You don't keep anything for later 11:06AM
21 consultation or anything like that?

22 A No, no.

23 Q Is there any folks besides poultry growers to
24 attend these classes? You're there and university
25 representatives are there, obviously, but any other 11:06AM

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1 group? 11:06AM

2 A You know, everybody seems to be dressed like I am
3 so I don't know who is with who, you know. I mean,
4 NRCS guys, I kind of know some of them just over the
5 years of them being there so I know they're with NRCS, 11:07AM
6 but --

7 Q Who keeps track of whether a grower is in
8 compliance with those educational hours?

9 A Who keeps track of whether they're in compliance
10 with the educational hours? 11:07AM

11 Q Those educational requirements that we've been
12 talking about?

13 A O.S.U. keeps track of the hours and then we keep
14 track of whether they went or not. I mean, as far as
15 did they get their three hours required that year. But 11:07AM
16 O.S.U. puts on the class and they have the database
17 that they maintain of the hours that each person has
18 attended and then we assess that to see who's been
19 going and who doesn't.

20 MR. GRAVES: Okay. And I think we're 11:08AM
21 about to run out of tape so I'll take a break here
22 and pick back up later.

23 THE WITNESS: Okay.

24 THE VIDEOGRAPHER: We are now off the
25 record. The time is 11:07 a.m. 11:08AM

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1 (Following a short recess at 11:08 a.m.,
2 proceedings continued on the record at 11:19 a.m.)

3 THE VIDEOGRAPHER: We are back on the
4 record. The time is 11:18 a.m.

5 Q Mr. Berry, we were talking about before the break 11:19AM
6 the educational part of what the growers attend and
7 your role in that. And you -- I think you had just
8 testified about keeping track or tracking compliance
9 with the educational requirements and how that works?

10 A Right. 11:19AM

11 Q Is there a place that -- let me back up and ask
12 you first: Are you the person that would make sure
13 that a poultry grower has attended the number of hours
14 they need to attend in a given year for the growers in
15 your area? 11:19AM

16 A Right. I understand what you're saying. I'm not
17 real sure how to answer that.

18 Q Do you check in some way?

19 A I can. I can access the O.S.U. database that
20 shows the numbers of hours. And I try to access that 11:20AM
21 database when I know I'm going to a particular farm to
22 check to see if the operator of the farm, which is who
23 is required to get the education, where he's at on
24 education so that once I'm there, I can help him, you
25 know, understand that he either needs to be finding a 11:20AM

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1 class. Or sometimes there's been error on the database 11:20AM
2 where when you attend -- when you attend one of these
3 O.S.U. classes you get a certificate showing that you
4 was there. And the operator is required to keep that
5 in his records to prove that he was at that class. And 11:20AM
6 there's been, you know, every once in a while the
7 database -- they also have a sign-in sheet that they
8 all sign in and at the end of the class they get a
9 certificate. And sometimes they take the sign-in sheet
10 and they, the O.S.U. people, put it on their website, 11:21AM
11 the database there, and sometimes a class might not
12 have been entered for whatever reason, so if you pull
13 up the website, it shows that somebody needs three
14 hours, but if I go to their farm they may have that
15 certificate where they were there. And so I try to 11:21AM
16 check what the database is saying before I go, if
17 possible, just to make sure that everybody is on the
18 same page.

19 Q If you had checked the database and it shows that
20 they didn't have their hours in for this year and then 11:21AM
21 you get to the farm and they've got a certificate, what
22 do you do at that point?

23 A I ask them to make a copy of it. Sometimes they
24 have a -- you know, a way to make a copy at the farm
25 and sometimes they have to go to town to get a copy. 11:21AM

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1 Then they send that to Oklahoma City. And then from 11:21AM
2 Oklahoma City, they forward it to O.S.U. to update
3 their database.

4 Q Are the certificates part of the records that
5 you're charged with reviewing when you will go out to a 11:22AM
6 farm each year?

7 A Correct.

8 Q Are you also charged with checking that O.S.U.
9 database?

10 A No, sir. 11:22AM

11 Q That's just something you do from time to time?

12 A I just do that trying to help make sure that the
13 grower did attend or not attend. If I get there and he
14 says well, Dave, I was there, here's my certificate and
15 the database said it didn't, because Oklahoma City, 11:22AM
16 they're going to look at the database. And when they
17 look at the database, it will show they didn't have
18 three hours, so I want them to be able to send that
19 certificate in to show that they were there.

20 Q Has the database been wrong enough times that it's 11:22AM
21 caused you to have -- you just start to check it?

22 A Not necessarily, but one time is enough for me.

23 Q Okay. Has it happened more than one time?

24 A You know, I'd say maybe two or three times that
25 I've had to request that the grower send in the 11:23AM

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1 certificate. They get fined money if they don't attend 11:23AM
2 and so I just try to help them if they got to be fined.
3 It just saves helping them.

4 Q Would you, if you had checked the database and saw
5 that it showed they hadn't attended and then you get to 11:23AM
6 the farm and see that they have, would you communicate
7 that in any way to Oklahoma City yourself? I
8 understand they still need to send the copy in.

9 A Correct.

10 Q But would you communicate that as well? 11:23AM

11 A Well, I have to write what I see and if I see a --
12 like, on that one exhibit on my inspection sheet
13 there's a part for education that I write down the nine
14 hours and then I write down the three hours that
15 they've been to. And if I see a certificate I write it 11:23AM
16 down because I actually saw it. But I know the
17 database is not showing it so then I request -- and I
18 may make a note in my memo that, but more than anything
19 I just write it down just to try to attach a copy of
20 what I see with my inspection sheet if I can send it at 11:24AM
21 the same time so I don't have to make a memo.

22 Q Okay. Would Oklahoma City correct their records
23 based on just your report or do they still have to --
24 they still have to wait for the grower to send that
25 certificate in before they'll accept something that's 11:24AM

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1 different than the database? 11:24AM

2 MS. WEAVER: Object to the form.

3 A Yes. Well, yeah.

4 Q I think we're talking over each other a little
5 bit. I was kind of slow in spitting that question out, 11:24AM
6 but the question is: If there is a difference between
7 what the database shows and what you find record-wise
8 when you go out there and you've noted that in your
9 report, will Oklahoma City still have to wait until
10 they get a copy of the certificate before they'll fix 11:24AM
11 things on their end?

12 A Correct.

13 MS. WEAVER: Object to form.

14 Q Do you understand the question?

15 A Yes, I do. The certificate has to be -- the 11:24AM
16 certificate is proof. They don't take what I say.

17 Q Okay.

18 A And even though I write it in my inspection sheet
19 because I saw it, they still have to have a copy of
20 that certificate before they will accept that. 11:25AM

21 Q Is the database that Oklahoma State operates
22 changed at some point to reflect the correct
23 information?

24 A Yes, it gets updated.

25 Q How is that done? 11:25AM

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1 A I don't know. 11:25AM

2 Q And you access this database over your computer?

3 A Yes, I do. And anybody else can access it, too.

4 Q Do you keep any records? I think I know the
5 answer to it based on your previous responses, but do 11:25AM

6 you keep any records of when you've accessed that
7 database and what you found on the database?

8 A No.

9 Q Do you have any farms in your geographical area
10 that are managed by a poultry integrator as opposed to 11:26AM
11 an independent owner/operator?

12 A All my -- I believe all my farms are owned by a
13 person and then they have a company integrator.

14 Q They have a contract with an integrator?

15 A I don't know their business. I suppose they would 11:26AM
16 have a contract with a company.

17 Q Okay. So to re-ask it, to your knowledge you
18 don't have any farms in your geographical area that are
19 owned or managed by one of the companies?

20 A No. 11:26AM

21 Q Okay. Do you have any growers in your area who
22 are unable to speak English or who are limited in being
23 able to speak English?

24 A Yeah, I have a few.

25 Q How do you communicate with those growers? 11:26AM

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1 A Usually somebody in that family can speak. I've 11:26AM
2 never encountered where somebody couldn't understand
3 what I'm saying. You know, their English may not be
4 fluent but they do understand what I'm saying, my
5 English. 11:27AM

6 Q And do you understand what they're saying?

7 A Not always. But as long as they understand what
8 I'm saying, it's all that matters when I'm there. You
9 know, I'm not trying to understand their whole
10 conversation with me, I just want to make sure that 11:27AM
11 they understand what they're required to do.

12 Q What if they have questions for technical
13 assistance or something of that nature?

14 A They, theoretically they don't really ask those
15 kind of questions back to me. I just tell them that 11:27AM
16 you're required to do this and do you understand and
17 they do. They, you know, say they do and, so far, I
18 guess they do.

19 Q Okay. Have you had any problems with any kind of
20 complaints or violations on those particular farms? 11:27AM

21 A Not necessarily. I mean, I do have, you know, and
22 it's just because it was a most recent complaint
23 against one of those type of farms.

24 Q And what type of complaint was that?

25 A An odor complaint. 11:28AM

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1 Q And was it an odor complaint that you found to 11:28AM
2 have truth to it?

3 A No, no. I mean, there was an odor but, I mean, it
4 wasn't nothing that would have been dead chickens and
5 stacked litter and stuff like that. 11:28AM

6 Q How are you made aware -- I guess my question is:
7 How are you made aware that a grower who has some
8 limitation being able to communicate in English, how do
9 you know that they don't have technical assistance
10 questions? 11:28AM

11 A How do I know that they don't? If they do -- I'm
12 not saying that they can't speak English and that I
13 can't totally understand them, but sometimes they will
14 talk in their language and I can't understand that but
15 when they're talking English I can make out what 11:29AM
16 they're saying. I mean, you have to ask them to repeat
17 it, you know, several times sometimes but, you know, if
18 they have a question they'll ask it in English or
19 they'll ask it amongst each other in their language and
20 then somebody who can kind of speak English will ask 11:29AM
21 me.

22 Q What other languages have you encountered out
23 there? I mean, what nationalities are you
24 encountering?

25 A The only one I know is English. I mean, I don't 11:29AM

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1 know what they're -- I mean, that's about -- I call 11:29AM
2 them Laotian. I don't know if that's correct or not.

3 Q And I take it you haven't been trained in how to
4 speak that particular language or whatever language it
5 is there? 11:29AM

6 A No, I have not.

7 Q Do you have any idea of what percentage of the
8 growers that are in your geographical territory that
9 are poultry growers that also have cattle?

10 A I wouldn't know a number. I mean, you know, I 11:30AM
11 know I have some that do, some dairy, some, you know,
12 have beef cattle but a number of how many do, I don't
13 know that.

14 Q And you don't have an estimate of what percentage,
15 like half or 25 percent, or anything like that? 11:30AM

16 A No.

17 Q Is it, in your opinion, a large number of them?

18 A Be hard to say. I mean, they, you know, they live
19 in the country and the reason it's hard for me to
20 answer that is because there's neighboring farms and 11:31AM
21 ranches around these poultry operations and sometimes
22 I'm not real clear of do they own those cows or that
23 piece of land so to tell you that, I couldn't tell you.
24 I don't know the number.

25 Q Based on your experience as a poultry inspector 11:31AM

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1 and also your background on your father's farm, do you 11:31AM
2 agree there is a relationship between the use of
3 poultry litter and ownership of cattle?

4 A That there's -- I'm sorry, would you repeat that?

5 Q That there's a relationship between -- a close 11:31AM
6 relationship between the use of litter and the
7 ownership of cattle, raising cattle?

8 MS. WEAVER: Object to the form.

9 A The only relationship, I guess, that I would see
10 is that the cattleman uses the poultry litter for 11:31AM
11 fertilizer.

12 Q And to your knowledge, do a number of cattlemen
13 also get in the poultry business so that they'll have
14 poultry litter?

15 A I'd say not necessarily. Like my Laotian growers, 11:32AM
16 they're just, I think, growing chickens to make a
17 living.

18 Q That's one grower though, right, one farm?

19 A Yeah, I mean, but, I mean, I don't know who all is
20 doing it to grow chickens so that they've got poultry 11:32AM
21 litter for their cattle. I wouldn't know their
22 intentions.

23 Q In your experience, are any of the poultry growers
24 in your area, do they have any intent that you know of
25 to harm to try to harm the waters in Oklahoma? 11:32AM

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1 MS. WEAVER: Object to the form. 11:32AM

2 A No, I don't know.

3 Q You don't know of any them who have that intent?

4 A No.

5 Q In your experience, do you know of any who have 11:32AM
6 any intent to hurt the soils in Oklahoma?

7 MS. WEAVER: Object to the form.

8 A No, I don't know of anyone.

9 Q In your experience, has an inspector or are you
10 aware of anyone -- where anybody has suffered any type 11:33AM
11 of health effects, adverse health effects, as a result
12 of being around poultry litter?

13 A I'm not aware of it.

14 Q Are you aware of any growers in your area who have
15 discharged poultry litter directly into the waters of 11:33AM
16 Oklahoma?

17 A I'm not aware of it.

18 Q I think you've already testified that you're
19 generally aware of the provisions of the Oklahoma
20 Registered Poultry Feeding Operations Act? 11:34AM

21 A Correct.

22 Q Are there any other Acts that relate to your job
23 besides that one that you're aware of?

24 A Not that I'm aware of.

25 Q Is that the Act that you referred to whenever you 11:34AM

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1 stated that you would consult it from time to time? 11:34AM

2 MS. WEAVER: Object to form.

3 A Yeah. I mean, I'll read the Act but I don't read
4 the Act for answers. If I need an answer I'll call my
5 boss. I have read the Act because it was given to me 11:34AM
6 when I started working.

7 Q And again, your boss, that's Mr. Parrish?

8 A Dan Parrish.

9 Q I wanted to ask you some questions about the Act.
10 And if you know, you can answer them. If you don't, 11:34AM
11 you can just let me know that.

12 A Okay.

13 Q Do you know whether, under that Act, whether you
14 can construct any poultry houses in Oklahoma without
15 first having registered with the Department of 11:34AM
16 Agriculture?

17 A You have to have it registered with the Department
18 of Agriculture before you can start construction on a
19 poultry barn.

20 Q And so if the Department of Agriculture wanted to 11:35AM
21 stop poultry house construction, they would just not
22 approve a registration?

23 A I don't know what the protocol is over approving
24 and not approving.

25 Q Do you know who oversees that part of the 11:35AM

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1 Department of Agriculture, the registration process? 11:35AM

2 A I don't know.

3 Q Is it Mr. Parrish?

4 A I don't know. I'm sure he's involved, but I don't
5 know. 11:35AM

6 Q Have you ever been involved in any discussions
7 regarding registration of poultry houses in Oklahoma?

8 A Any conversations?

9 Q With folks at the Department of Agriculture
10 involving whether or not to register poultry houses in 11:35AM
11 Oklahoma?

12 A Oh, no, no. If a person wanted to build barns or
13 buy an operation has to fill out the three-page
14 application. And I help assist filling that out if the
15 new person that -- you know, make sure they've got the 11:36AM
16 correct documents, that they're -- that the three page
17 asks for but that's the only communications I have with
18 that.

19 Q That's a new grower, somebody who is building new
20 houses? 11:36AM

21 A Or wants to build. They can't start construction
22 until --

23 Q Right.

24 A And they can't have birds. You know, they can't
25 buy a farm without being registered and I just assist 11:36AM

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1 | them in getting the correct documents to fill that out 11:36AM
2 | properly.

3 Q Do you have a handle on how many new houses have
4 been built in your territory during the time you've
5 been an inspector? 11:36AM

6 | A I don't.

7 Q When was the last time a new poultry house was
8 built in your area?

9 A In my area. I'd say a couple years, two to three
10 years. 11:37AM

11 Q With regard to registration, do you know whether
12 the Act requires someone to register again? That's
13 someone whose already registered? We're talking
14 somebody that's already registered, do you know whether
15 they're required to register again if they're going to 11:37AM
16 increase their litter production by some amount?

17 A If they increase by ten percent they have to
18 re-register with the Department of Agriculture and
19 update their Animal Waste Management Plan to reflect
20 so. 11:37AM

21 Q Do you know when the last time was that an
22 increase like that or a re-registration was approved in
23 your area?

24 | A I don't.

25	Q	Has there ever been one in your time there?	11:38AM
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1 A I can't recall one. 11:38AM

2 Q The Act also discusses penalties and fines for
3 violations, does it not?

4 A Yeah, it talks about penalties and fines.

5 Q Have you ever been involved in any situation where 11:38AM
6 someone was charged and had to make penalties or fines?

7 A I'm aware of it when it's happened.

8 Q Has it ever happened in your territory?

9 A Yes, it has.

10 Q How many times has that happened in your 11:38AM
11 territory?

12 A I would be speculating. I mean, it's happened,
13 but I wouldn't know a number for you.

14 Q Was it poultry growers or land applicators?

15 A Both. 11:38AM

16 Q Okay.

17 A Both. And yeah, it would be both.

18 Q Okay. Can you remember any specific growers as
19 you sit here today?

20 A I don't know names. Seems like, you know, the -- 11:39AM
21 and it's been a while since I've seen it, but it was
22 both.

23 Q Do you know the types of situations where someone
24 is charged with a penalty or a fine rather than just
25 being asked to take some type of corrective action? 11:39AM

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1 A It happens both ways. Sometimes corrective action 11:39AM
2 is all that's needed and sometimes corrective action
3 plus a fine is assessed.

4 Q Right. Are you aware of what the difference is,
5 why one person would just be asked to take corrective 11:39AM
6 action and why another might be fined or penalized?

7 A I'm not into the -- I don't -- I don't play that
8 part. I don't know.

9 Q Are there any other sources of authority that you
10 refer to or that the poultry growers would refer to 11:39AM
11 other than the -- other than the Act that you're
12 charged with dealing with, with regard to poultry
13 litter and registration of poultry farms that you're
14 aware?

15 A I'm not aware of anything else. 11:40AM

16 Q Does the Act contain any outline or statement of
17 best management practices for poultry litter?

18 A I don't know if it's in there or not.

19 Q Do you know what best management practices are?

20 A I know what my definitions are, I don't know if 11:40AM
21 there's a correct one or not.

22 Q What's your definition of best management
23 practices?

24 A Following the law, following your AWMP.

25 Q And by following the law, you mean this Act that 11:40AM

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1 we were just talking about? 11:40AM

2 A Correct.

3 Q So following the Act, following the management,
4 the nutrient management plan. Anything else?

5 A No, sir. 11:41AM

6 Q Are you aware of what the Act says with regard to
7 discharge or runoff of poultry litter from an
8 application site?

9 A I'm not real familiar with that part of it.

10 Q What's your -- what's your understanding of it to 11:41AM
11 the degree that you do understand it?

12 A I don't -- in my job I haven't really dealt with
13 discharge.

14 Q Have you ever had to deal with a complaint about
15 that? 11:41AM

16 A Not saying a discharge, not necessarily a
17 discharge.

18 Q Or a runoff, do you know what runoff is?

19 A Mm-hmm, correct. Not necessarily with that
20 either. 11:42AM

21 Q Do you know what role, if any, a nutrient
22 management plan or whatever you want to call it, a farm
23 management plan, what role that plays with regard to
24 runoff or discharge?

25 A It would have the set back, you know, spreader set 11:42AM

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1 back rules or recommendations. 11:42AM

2 Q And what's your understanding of that?

3 A That on poultry litter, that it's 100-foot.

4 Q 100 feet from what?

5 A The waters of the state. 11:42AM

6 Q Any other information that you're aware of with
7 regard to what role that nutrient management plan plays
8 with regard to discharge or runoff?

9 A Well, basically, it would have the rate. You
10 know, it would take the landowner's soil sample and the 11:43AM
11 poultry litter test to calculate the land application
12 rate.

13 Q As far as your role with the Department of
14 Agriculture, if a grower is following the Act and
15 following the farm management plan, are they in 11:43AM
16 compliance?

17 MS. WEAVER: Object to the form.

18 A Can you repeat the question, please?

19 Q As far as what you do with the Department of
20 Agriculture, your role in what you do on a day-to-day 11:43AM
21 basis, if a grower is following the law, the Act, which
22 you've referred to, and the farm management plan. In
23 other words, your definition of B&Bs, if they're doing
24 those things, are they in compliance?

25 MS. WEAVER: Object to the form. Calls 11:44AM

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1 for a legal conclusion. 11:44AM

2 A If they're following the Act and they have an
3 Animal Waste Management Plan, then they are following
4 the law.

5 Q Do you know what the typical clean out time is for 11:44AM
6 the farms in your area? Is there one?

7 A There's not really a set rule of thumb that I'm
8 aware of, but I'm not involved in that part so I don't
9 know for sure.

10 Q Do the records that you review show how often they 11:44AM
11 clean out?

12 A Uh-huh.

13 Q And have you noticed any kind of a pattern or
14 anything there?

15 A I'm sure there is a pattern. I don't study it, 11:44AM
16 but I'm sure there is one. I just write down what they
17 give me, but I'm sure there is one if you looked at all
18 of them.

19 Q Okay. Have you ever been on a farm whenever a
20 house has been cleaned out? 11:45AM

21 A Yes.

22 Q And have you ever handled poultry litter yourself?
23 I think you said your father used it, but were you ever
24 involved in the application of it?

25 A No. 11:45AM

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1 Q Were you ever involved in the clean out of your 11:45AM
2 sister's houses in any way?

3 A No.

4 Q Have you ever recommended to anybody that they
5 purchase or use poultry litter, that it's a good 11:45AM
6 nutrient source?

7 A No.

8 Q Do you, in your experience dealing with poultry
9 litter, believe poultry litter to be a hazardous waste?

10 MS. WEAVER: Object to form. Calls for a 11:45AM
11 legal conclusion.

12 A I'm not qualified to know. I wouldn't know.

13 Q Are you afraid to be around poultry litter when
14 you go out on a farm?

15 A No, I'm not. 11:45AM

16 Q Do you wear any kind of special equipment,
17 protective equipment or anything when you're out on a
18 farm?

19 A I wear plastic boots now and it ain't because of
20 my fear, it's for biosecurity. 11:46AM

21 Q Is that something that the growers or the
22 integrators have asked?

23 A It's something that my boss asked us to start
24 doing.

25 Q And do you know what about biosecurity calls for 11:46AM

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1 wearing boots? 11:46AM

2 A Do what now?

3 Q Do you what biosecurity is?

4 A Mm-hmm, to some extent.

5 Q What is it? 11:46AM

6 A Just protecting from transmitting disease from
7 farm to farm.

8 Q Bird diseases?

9 A I suppose. I just know a disease is a disease.

10 Q Are you aware of -- I mean, you've already 11:46AM
11 testified you're not aware of any human diseases that
12 have been related to poultry litter?

13 A Yeah, I would assume it would have to be an animal
14 type.

15 Q Are you asked to wash these boots or anything when 11:46AM
16 you're going from one farm for another?

17 A They're plastic and I just -- I put them in a
18 trash bag at the end of every farm. I don't keep them
19 on.

20 Q Are these like little elastic things that fit over 11:47AM
21 your shoes?

22 A They're little clear boots, plastic looking
23 things.

24 Q What do you do with them after you take them off?

25 A I put them in my trash bag. 11:47AM

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1 Q At home? 11:47AM

2 A Right.

3 Q They're not disposed of in a manner that hazardous
4 waste is to be disposed of to your knowledge?

5 A No, no. 11:47AM

6 Q Do you wear any other, what we'll call,
7 specialized equipment besides these plastic boots when
8 you go out on a farm?

9 A No, sir, I don't.

10 Q What do you know about the facts or specifics of 11:47AM
11 this lawsuit that you're here -- that you're being
12 called on to testify in today?

13 MS. WEAVER: Object to the form. And to
14 the extent that it reveals anything that you've
15 discussed with counsel, I would instruct you not to 11:48AM
16 answer the question.

17 MR. GRAVES: I will assert that the
18 attorney/client privilege doesn't apply to facts,
19 but --

20 Q So what facts do you know about this lawsuit? 11:48AM

21 A I don't know any facts, I just know what pretty
22 much I've read in the paper or see on the news.

23 Q Okay. Is there a particular newspaper that you
24 read?

25 A Tulsa World maybe, Pryor Daily Times. 11:48AM

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1 Q Tulsa World and Pryor Daily Times. What else 11:48AM
2 besides newspapers did you say you had received
3 information on about the lawsuit?

4 A The news.

5 Q Like the television news? 11:48AM

6 A No, the news from people, you know, farms, out in
7 the country just talking about it.

8 Q What have they said?

9 A I can't recall. I mean, it's just that the --
10 that there's a lawsuit. 11:48AM

11 Q None of them have expressed any opinions about the
12 lawsuit to you?

13 A I don't know that, no.

14 Q Within the Department of Agriculture, have you had
15 any discussions with anyone about this lawsuit? 11:49AM

16 A No.

17 Q Have you yourself ever heard any concerns voiced
18 outside of the lawsuit about poultry litter or the
19 effects of poultry litter?

20 A Only when I receive a complaint. 11:49AM

21 Q And that's the complaints that we've talked about?

22 A Yes, sir.

23 Q Have you ever heard any concern voiced outside of
24 the lawsuit about any of the chemicals that are
25 contained within poultry litter? 11:49AM

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1 A No, sir. 11:49AM

2 Q Have you ever heard any concern voiced outside of
3 this lawsuit about poultry litter being harmful in some
4 way?

5 A No. 11:50AM

6 Q I think that you testified earlier about some GPS
7 training that you received and then some GPS work that
8 you went out in the field and did and you thought it
9 was last summer sometime?

10 A Correct. 11:50AM

11 Q I wanted to ask you about a meeting that I believe
12 you were in attendance with Secretary Beach and
13 Mr. Parrish and some growers in May of 2005. Do you
14 remember a meeting like that?

15 A At the Vo-Tech in Little Kansas. 11:50AM

16 Q In Kansas, Oklahoma?

17 A Yeah, yes, sir.

18 Q Is that what they call it, Little Kansas?

19 A Yes, sir.

20 Q As opposed to big Kansas, the state? 11:50AM

21 A (Nods head.)

22 Q Okay. What's your recollection of what occurred
23 at that particular meeting?

24 A The growers that were in attendance were upset
25 over soil sampling. 11:51AM

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1 Q Were you aware of anything that led up to that 11:51AM
2 meeting? In other words, were you aware of what had
3 been going on that caused the meeting to be called?

4 A I guess we were -- me and Littlefield, the other
5 inspector, were asked to go -- if we could go take soil 11:51AM
6 samples.

7 MS. WEAVER: I will just state for the
8 record that to the extent that any of your testimony
9 will deal with what we, I think, was referred to in
10 the John Littlefield deposition as a planning 11:51AM
11 meeting, prior to this May 3rd, 2005, meeting that
12 you had with counsel when there weren't other
13 growers --

14 THE WITNESS: Right.

15 MS. WEAVER: -- there, we have claimed 11:52AM
16 privilege on that particular meeting so as to what
17 relates to anything said in that particular meeting,
18 that's privileged and I'll instruct you not to
19 answer as to that. As to the May 3rd, 2005, meeting
20 we don't have privilege as to that particular 11:52AM
21 meeting.

22 MR. GRAVES: Okay. I don't think I've
23 asked about that meeting.

24 MS. WEAVER: I was just making a statement
25 just in case his testimony was going to go towards 11:53AM

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1 anything that was discussed at the planning meeting. 11:53AM

2 MR. GRAVES: I don't even know when the
3 meeting was that you're talking about so maybe you
4 can state what the date was that we're talking about
5 so we don't refer to it. 11:53AM

6 MS. WEAVER: I don't have a date for that
7 meeting. That's something that I haven't been
8 provided. I'm not sure what the date of that
9 particular meeting was, but it was just a meeting
10 with counsel and Mr. Littlefield and Mr. Berry, from 11:53AM
11 what I understand. And the privilege we're
12 asserting from Mr. Littlefield's deposition and I
13 just wanted to assert that for the record also in
14 his deposition as to that particular meeting.

15 MR. GRAVES: Okay. I don't know how to 11:53AM
16 not potentially tread into it without knowing when
17 it was and who asked him to take soil samples. So
18 we're, you know, I'm going to ask the questions and
19 if you know that some of this information came out
20 of that meeting, you can assert the objection? 11:53AM

21 MS. WEAVER: Understood.
22 Q I think I asked you about what had been occurring
23 that led up to the meeting in Kansas, Oklahoma, in May
24 of 2005, and your testimony was that you and
25 Mr. Littlefield had been asked to go take some soil 11:53AM

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1 samples, correct? 11:53AM

2 A Correct.

3 Q That's where we were before we got side tracked a
4 little bit. Who asked you to go take soil samples?

5 A You know, it was due to the meeting that we were 11:53AM
6 talking about but my -- Dan, Dan Parrish, my boss, was
7 the one that instructed us what we were going to do.

8 Q I'm not asking you about the specifics of any
9 communications or how it was worded a meeting where a
10 lawyer was in attendance, but I do want to know who 11:54AM
11 asked you to go do what you out there doing?

12 A No.

13 Q So it was Mr. Parrish?

14 A Yes. That's how I found out.

15 Q Did Mr. Parrish communicate that to you in a 11:54AM
16 meeting -- in a planning meeting where a lawyer was
17 present or was that communicated in some other way?

18 A In some other way.

19 Q Okay. How did Mr. Parrish communicate to you that
20 he wanted you to go out and take soil samples? 11:54AM

21 A I don't recall if it was a memo or a phone call
22 that we were to attend the meeting that's been brought
23 up.

24 Q Okay. So you think you got either a written
25 memorandum or a telephone call from Mr. Parrish that 11:54AM

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1 asked you and presumably Mr. Littlefield to attend a 11:54AM
2 planning meeting where a lawyer was present?

3 A Correct.

4 Q Who was present at the planning meeting?

5 A At the meeting that we are talking about? 11:54AM

6 Q I'm not asking you about what was said at the
7 meeting, I'm asking you about who was there.

8 A Dan, me, John Littlefield.

9 Q By "Dan," you mean Mr. Parrish?

10 A Dan Parrish. 11:55AM

11 Q Okay.

12 A A group called -- what do they call themselves?
13 Some group. It will come to me in a minute. I believe
14 some lawyers and I believe that's about it. There's a
15 group, though, that was there that were just -- that 11:55AM
16 were like soil people or some specialists or something.

17 Q Okay. Do you remember who any of these soil
18 people were, any of their names?

19 A No, I don't.

20 Q Did you ever see any memorandum or minutes or 11:55AM
21 anything in follow up to that meeting?

22 A No.

23 Q Do you know whether these soil folks were people
24 that were employed or hired by the Department of
25 Agriculture? 11:56AM

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1 A I don't know. 11:56AM

2 MR. GRAVES: Do you know?

3 MS. WEAVER: I actually do know that they
4 were actually retained on behalf of the State so
5 they are, as far as I understand, they were 11:56AM
6 consultants.

7 MR. GRAVES: And who were they?

8 MS. STEWART: I wasn't at the meeting so.

9 MS. WEAVER: Yeah, I believe it was CDM.

10 MR. GRAVES: Do you all know who the 11:56AM
11 scientists were that were there?

12 MS. WEAVER: I do not.

13 Q Okay. Coming out of this meeting, was it your
14 understanding that you were to go take soil samples on
15 some farms? 11:57AM

16 A Yes.

17 Q Do you remember which farms you were to take soil
18 samples on?

19 A I don't remember the names of them, no.

20 Q What was your understanding of why you needed to 11:57AM
21 take soil samples on those particular farms?

22 MS. WEAVER: I'll object to the extent
23 that it calls for any kind of communication
24 involving the lawsuit that was -- we'll claim
25 privilege on it and instruct you not to answer that 11:57AM

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1 question. 11:57AM

2 MR. GRAVES: I didn't ask him what the
3 communication was, I asked him what he understood to
4 be why he was taking soil samples.

5 MS. WEAVER: And he would have derived 11:57AM
6 that from a communication by counsel.

7 MR. GRAVES: I don't think you can claim
8 privilege to what his understanding is?

9 MS. WEAVER: I think you can claim
10 privilege as to substantive information transmitted 11:57AM
11 at the meeting.

12 MR. GRAVES: All right. Certify the
13 question.

14 Q Whose farm were you going to sample?

15 A Whose? 11:57AM

16 Q Which farms were you instructed to go to?

17 A I don't know that. I don't recall the names of
18 the farms that I was to go to.

19 Q How many were there?

20 A Seems like there were 12 or 15, maybe. 11:58AM

21 Q Total or that you were supposed to go to? In
22 other words, Mr. Littlefield was going to be taking
23 soil samples as well?

24 A Right, right. Maybe that was total. I don't
25 recall the exact number. 11:58AM

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1 Q At this planning meeting, was there anybody 11:58AM
2 present besides you, Mr. Littlefield, Mr. Parrish, CDM
3 scientists and attorneys?

4 A That's who I remember.

5 Q Okay. What were you supposed to be sampling for, 11:58AM
6 do you know?

7 MS. WEAVER: Object to the form. Calls
8 for attorney/client privileged communications. I'll
9 instruct the witness not to answer.

10 MR. GRAVES: How is what he's sampling 11:59AM
11 for, the factual material of what he's sampling for
12 attorney/client privilege?

13 MS. WEAVER: It was what was transmitted
14 in substantive conversation at the meeting. I
15 believe that anything, any substance of that 11:59AM
16 conversation at that meeting is privileged.

17 MR. GRAVES: I believe that the State has
18 provided us with samples with the results of
19 samples. Go off the record for a second.

20 THE VIDEOGRAPHER: We are now off the 11:59AM
21 record. The time is 11:59 a.m.

22 (Following a short recess at 11:59 a.m.,
23 proceedings continued on the record at 12:02 p.m.)

24 THE VIDEOGRAPHER: We are back on the
25 record. The time is 12:02 p.m. 12:02PM

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1 Q Can the court reporter read back my last 12:02PM
2 question -- my last real question.

3 (Whereupon, the court reporter read
4 back the previous question.)

5 MS. WEAVER: And I will withdraw the 12:02PM
6 objection.

7 Q What were you supposed to be sampling for?

8 A I don't know. There was -- I don't know.

9 Q What were you supposed to be doing?

10 A Taking soil samples. 12:02PM

11 Q Just literally pulling soil samples?

12 A Right. We had a protocol of how they wanted it
13 done and we would still go out and do that and bag them
14 and then take them or hand them over to CDM.

15 Q Did you understand that to be part of this 12:03PM
16 lawsuit?

17 MS. WEAVER: Object to form.

18 A Yeah, yeah.

19 Q Had you ever been asked to do anything like that
20 before? 12:03PM

21 A Not like that. I've been asked to soil sample
22 before. We discussed that previously.

23 Q Right.

24 A But not sample like this, no.

25 Q Had the previous soil samples that you had taken 12:03PM

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1 that we already discussed, were those based on 12:03PM
2 complaints?

3 A For the most part we have done random soil
4 sampling before just at random at the instruction of my
5 boss, Dan Parrish. Each inspector had to go out and 12:03PM
6 take soil samples from different farms.

7 Q When did that happen?

8 A It's been -- I don't know the exact year, three
9 years ago probably, three or four.

10 Q How many farms did you take random soil samples 12:03PM
11 for back then?

12 A I think each one of us had to do like 25 farms
13 each.

14 Q And were those poultry growers or were these
15 places that were land applied? 12:04PM

16 A Poultry growers.

17 Q Did you determine before you took the random soil
18 samples then that those were poultry farms where litter
19 had been applied or were you just taking soil samples?

20 A Just at random. It had to be a poultry operation 12:04PM
21 and we just picked a field to sample.

22 Q And you didn't know whether litter had been
23 applied on that field or not?

24 A No, but we asked, you know, if there had been.

25 Q Who did you ask? 12:04PM

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1 A The poultry grower that owned the farm. 12:04PM

2 Q If a poultry grower told you that litter had not
3 been applied would you still have sampled that field or
4 would you have selected a different field?

5 A We would have selected one it had been applied in. 12:04PM

6 Q What was your understanding of why that particular
7 soil sampling was being done?

8 A I don't know, I was just told to do it.

9 Q How long ago was this?

10 A I'm guessing, but it was probably three, four 12:05PM
11 years ago.

12 Q The 2003 or '04 time frame?

13 A Possibly.

14 Q Back during that soil sampling run, for lack of a
15 better term, how was it communicated to you that you 12:05PM
16 were to do this soil sampling?

17 A How I was to do it?

18 Q No, how was it communicated to you that this --
19 that you were going to be doing this?

20 A Dan Parrish. 12:05PM

21 Q Was that by telephone or by memo or what?

22 A It was probably by a memo.

23 Q In that case, were you called to any planning
24 sessions where you were told any kind of protocol or
25 anything? 12:05PM

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1 A I don't recall that we were called in to do 12:05PM
2 anything.

3 Q Was Mr. Littlefield also involved in this one?

4 A All the poultry inspectors were.

5 Q How many were there? 12:06PM

6 A I think there's five of us.

7 Q Okay. Who selected the farms that would be
8 sampled, the growers?

9 A Yeah, we just -- like in my territory, I just took
10 my list and just randomly picked. There wasn't no 12:06PM
11 rhyme or reason to any of it.

12 Q What did you do with the soil samples after you
13 took them?

14 A We delivered them to O.S.U. in Stillwater to the
15 soil lab. 12:06PM

16 Q And do you know who the results were communicated
17 to?

18 A The results went back to Dan Parrish and then I
19 believe a copy also went back to the grower.

20 Q Did you get a copy? 12:07PM

21 A No, I did not.

22 Q How did you know that Mr. Parrish or the growers
23 got copies of the results?

24 A I know Dan got a copy because on my chain of
25 custody, that's who I wrote the report to and since my 12:07PM

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1 inspections -- I recall seeing, you know, the copies of 12:07PM
2 those soil test results in growers' files.

3 Q Were those soil test results utilized in any way
4 as far as adjusting nutrient management plans?

5 A Not that I'm aware of. 12:07PM

6 Q Or determining where they could apply litter?

7 A Not that I'm aware of.

8 Q Do you know what those results were used for?

9 A I have no idea.

10 Q Did Mr. Parrish ever advise who or why he was 12:07PM
11 asking you to do this?

12 A No, he did not.

13 Q Did he ever advise who -- who had asked -- who, if
14 anyone, had asked him to do this?

15 A No, he did not. 12:07PM

16 Q Do you know as we sit here now which farms you
17 sampled back in '03 or '04?

18 A I could not remember.

19 Q Would you have kept any kind of a list where you
20 marked in some way where you went? 12:08PM

21 A No, I wouldn't have.

22 Q To your knowledge, is there any way of locating
23 where you went other than getting a copy of these -- of
24 whatever the soil test results were that were provided
25 to Mr. Parrish by O.S.U.? 12:08PM

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1 A The only place I'd know you'd get them is from the 12:08PM
2 office.

3 Q Were you provided with any specific -- I may have
4 already asked this, but I can't remember. Were you
5 provided with specific protocol as to how you were to 12:08PM
6 collect these samples?

7 A No. The protocol that we were to use was O.S.U.,
8 the way they train the grower to take theirs, that's
9 how we took ours.

10 Q So whatever O.S.U. was advising the growers to do 12:09PM
11 with regard to soil sampling back in that time frame,
12 would be how you would have collected your soil
13 samples?

14 A Yes, sir.

15 Q At that point in time, would you have been wearing 12:09PM
16 the plastic boots that we talked about earlier?

17 A No, sir.

18 Q Would you have been wearing any other equipment or
19 anything as you collected those samples?

20 A No, sir. 12:09PM

21 Q I think we've talked about how you selected a
22 field a little bit, but I want to make sure I
23 understand. And we're still talking about this
24 sampling event you did back in 2003 or '04 time frame.
25 Would you contact the poultry grower in some way in 12:09PM

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1 advance to advise them that you wanted to come out and 12:09PM
2 take samples?

3 A Not that I'm aware of. I think we just went out
4 and just drive up on the farm, you know, kind of an
5 unannounced type deal and request a soil sample. 12:10PM
6 That's how it went.

7 Q If the grower wasn't there, would you have still
8 taken a sample?

9 A No.

10 Q If a grower that you went to -- did you ever have 12:10PM
11 any growers advise you that they didn't apply any
12 poultry litter on any of their fields?

13 A Yes.

14 Q Did you sample on their farms?

15 A If they said that they didn't spread? 12:10PM

16 Q Right.

17 A No, I didn't.

18 Q Was part of what Mr. Parrish communicated to you
19 that he wanted you to sample fields where litter had
20 been applied? 12:10PM

21 A Yeah, I took it like that. You know, they had to
22 be a place where they had spread litter before.

23 Q Over what period of time did this sampling take
24 place?

25 A I don't know, it was in the summer time. I know 12:10PM

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1 it was hot. 12:10PM

2 Q Did you do it all within a matter of days or was
3 it over a series of weeks?

4 A It took us -- yeah, it was over a few weeks. It
5 took a while to get it done. 12:11PM

6 Q How long would you keep the soil sample after
7 you -- after you collected it and before you would take
8 it to the laboratory?

9 A You know, I don't recall that exactly but
10 theoretically I try to -- by Friday, if I do my work 12:11PM
11 that work week, I try to have it to O.S.U. by the end
12 of the week, if not sooner.

13 Q So if you -- do you work on Saturdays and Sundays?

14 A No.

15 Q So if you collected a soil sample on a Monday you 12:11PM
16 would get it to the lab by Friday?

17 A It would be there before Friday, yes, sir.

18 Q Okay. How do you transmit those samples to the
19 lab?

20 A Well -- 12:11PM

21 MR. ELROD: You mean send?

22 Q Yeah, how do you get them to the lab?

23 A I take them in my truck. They're in a soil bag
24 that I have and I put them in a box and take them the
25 to -- deliver them to O.S.U. 12:12PM

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1 Q Were you asked to sample anything besides soil? 12:12PM

2 A No, just soil.

3 Q And you never heard what the purpose was or why
4 you were doing this?

5 A Not that I recall. 12:12PM

6 Q Okay. Back to where we started. Your
7 understanding coming out of a planning meeting was that
8 you had 12 to 15 farms in 2005 either total or that
9 you, personally you don't remember, that you were asked
10 to take samples at, correct? 12:12PM

11 A Correct.

12 Q And these were soil samples?

13 A Correct.

14 Q Were you asked to sample for anything else on that
15 occasion besides soil? 12:13PM

16 A I think we were requested to do a litter test
17 along with that.

18 Q Were you to again select fields where litter had
19 been applied?

20 A We were -- if I recall it right, we were -- we 12:13PM
21 would have known what fields we were to sample.

22 Q By that, do you mean you weren't having to ask the
23 growers like you were the previous time you did a
24 program like this?

25 A If I recall, we were assigned to certain fields to 12:13PM

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1 sample. 12:13PM

2 Q All right. Were they plotted on a map in some
3 way?

4 A I believe so.

5 MS. WEAVER: I'm going to object to the 12:13PM
6 form and state attorney/client privilege because I
7 think we're kind of back dooring into what the
8 substance of what he was asked to do during that
9 particular meeting was and not just asking what he
10 was asked to test for. 12:14PM

11 MR. GRAVES: I think that I've asked him
12 what he was asked to do and what he was provided
13 document-wise in order to do it. I haven't asked
14 him anything about a communication. My question was
15 just was he provided with any kind of map that 12:14PM
16 plotted out which field he was supposed to take
17 these soil samples off of.

18 MS. WEAVER: To the extent you can answer
19 that without revealing communication.

20 MR. GRAVES: Well, handing him a document 12:14PM
21 is a communication but it's not an attorney/client
22 privileged communication if he was using it to go
23 out and collect these soil samples.

24 A I believe we had maps to go by.

25 Q Do you know who prepared these maps? 12:14PM

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1 A I have no idea. 12:14PM

2 Q Was there -- I think you stated earlier that you
3 were provided with a protocol and I don't want to ask
4 you who communicated that protocol to you, but was
5 there anything different about the protocol for this 12:15PM
6 sampling event versus what you had done previously?

7 A Yes, there was.

8 Q What was it?

9 MS. WEAVER: Object to form. To the
10 extent that it calls for communications made to you 12:15PM
11 by counsel I will instruct you not to answer.

12 MR. GRAVES: Well, again, we're getting
13 into the same area we got into when we went off the
14 record a while ago and the facts of what the
15 protocols were that he used -- that he was going to 12:15PM
16 use to collect these samples is not attorney/client
17 privilege under Judge Joyner's order.

18 MS. WEAVER: I'm not personally aware of
19 what the parameters of that particular order are.
20 To the extent that you can answer that question 12:15PM
21 without revealing what you were told by an
22 attorney --

23 MR. GRAVES: Well, I don't care who told
24 it to him. The protocol of how you collected the
25 samples has already been determined by a court not 12:16PM

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1 to be privileged and not to be work product, 12:16PM
2 correct?

3 MS. WEAVER: Okay.

4 MR. ELROD: Yes.

5 MR. MIRKES: Yes. 12:16PM

6 MR. GRAVES: So I would ask you to
7 withdraw the objection and let him answer the
8 question.

9 MS. WEAVER: I will withdraw the objection
10 based on that representation. 12:16PM

11 Q Okay.

12 A The protocol was different to what we had done in
13 the past. It was asking for more samples.

14 Traditionally we take a six-inch sample when possible
15 and we were asked, I think it was, a two-inch and a 12:16PM
16 four-inch and a six-inch sample. And off of a farm, it
17 seemed like there was going to be like 900 and
18 something samples.

19 Q How many had there been previously under your
20 previous protocol on a farm, one? 12:16PM

21 A Well, when I take a soil sample, when I go into a
22 field, you know, if it's a 40- or 50-acre field, I'll
23 pull 15 to 20 six-inch samples, mix it together and
24 then take one sampling out of that.

25 Q And in this case, you were to be taking two-inch, 12:17PM

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1 four-inch and six-inch depth samples, 900 of them on 12:17PM
2 each field?

3 A I believe that's correct.

4 Q Was it 900 at each depth?

5 A I don't think it was 900 of each deal, I believe 12:17PM
6 it was 900 for a farm.

7 Q Okay. And was there any difference in how you
8 would be mixing those together or anything compared to
9 how you had done that previously?

10 A I don't believe we mixed them. Because we never 12:17PM
11 did it, it's hard for me to remember the exact
12 protocol.

13 Q I understand. Between the time that you received
14 instructions on how you were to go take these samples
15 and where you were to go take them and this meeting in 12:18PM
16 Kansas, Oklahoma, why don't you tell me what happened
17 that led to that meeting in Kansas, Oklahoma. In other
18 words, you walked out of a meeting with the
19 understanding that you were supposed to take some
20 samples and then you end up at a meeting in Kansas, 12:18PM
21 Oklahoma, with some growers. What happened in between?

22 A Well, we went out to the farms to try to pull soil
23 samples and the grower was, you know, spooked, I guess
24 would be the word, was unsure about it. It was
25 different to them and they didn't know what I was doing 12:18PM

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1 and they refused me. 12:18PM

2 Q And it wasn't just different to them, it was
3 different than what you had done previously, too,
4 correct?

5 A Correct. 12:19PM

6 Q Do you remember which grower it was that set this
7 off, the one that you just said was spooked and unsure?

8 A They all were.

9 Q Okay.

10 A I went to all of mine that were in my territory 12:19PM
11 and they all refused me.

12 Q You also said "we." Was there anybody else
13 traveling with you when you went to these farms?

14 A Mr. John Littlefield, the other poultry inspector.

15 Q You and Mr. Littlefield were traveling together? 12:19PM

16 A Yes, sir.

17 Q Was it your intent to collect these samples
18 together on each farm?

19 A Yes, sir.

20 MR. GRAVES: I think I've got a note that 12:19PM
21 we're about to run out after tape so we'll take a
22 lunch break at this point and come back after lunch.
23 We will take a one hour.

24 THE VIDEOGRAPHER: We are now off the
25 record. The time is 12:19 p.m. 12:19PM

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1 (Following a lunch recess at 12:17 p.m., 12:19PM
2 proceedings continued on the record at 1:38 p.m.)

3 THE VIDEOGRAPHER: We are back on the
4 record. The time is 1:40 p.m.

5 Q Mr. Berry, before the lunch break we had started 1:40PM
6 out talking about a meeting that took place in what you
7 referred to as Little Kansas or Kansas, Oklahoma, in
8 May of 2005. And I think that we had moved before that
9 meeting and I had asked you about what led up to that
10 meeting. And I think we left off where, you correct me 1:41PM
11 if I'm wrong, where you and Mr. Littlefield had gone
12 out to some farms and had met with some growers. And
13 will you tell me what it was that you would communicate
14 with the growers when you arrived at their farms and
15 then the response you were receiving? 1:41PM

16 A Well, when we got to the farm, if they were there,
17 we would basically just tell them that we were
18 instructed to do soil samples and kind of the protocol
19 of what we was going to be doing because there was -- I
20 think we call the group CDM or something were with us 1:41PM
21 but they couldn't come on the farm, only me and John
22 could go on the actual property for some reason. And
23 we would have to explain to them what that group of
24 people was doing out on the side of the road down there
25 and explain what we was going to do and how it was 1:42PM

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1 going to work. And, again, I can't remember all the 1:42PM
2 protocol that I would have had to have told them or I
3 did tell them, but I basically explain to them how it
4 was going to work. You know, that's how that got
5 started. And then they were, you know, concerned, one, 1:42PM
6 about the people out on the side of the road and, two,
7 that the time that I had been the inspector we had
8 never -- I had never showed up to do such a request and
9 in such a manner. And they wanted to -- whether
10 consulting somebody else or think about it or whatever 1:42PM
11 the story might have been. You know, I don't know that
12 refusing us is the best way to put it, but basically we
13 didn't do it. And I went to each of my farms that I
14 was assigned to do that and pretty much got the same
15 response. And then I believe that's when the Little 1:43PM
16 Kansas or Kansas meeting came about.

17 Q Why did CDM not come on the farm?

18 A I don't know.

19 Q Is that something that you understand?

20 A I understand that just me and John Littlefield 1:43PM
21 could go on the farm and CDM had to sit out on the
22 road.

23 Q What was the reason for CDM even being there if
24 they couldn't collect any of the samples or go on the
25 farm? 1:43PM

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1 A You know, I don't know because we was to ask for 1:43PM
2 permission for them to be able to come on the farm and
3 to assist me and John. I think CDM is trained to do
4 what me and John were asked to do in the way that
5 they -- I think it was their protocol. If I understand 1:43PM
6 it right, it was CDM's protocol how the soil samples
7 were to be took. And in return, we was supposed to ask
8 if they could they could come on, help us and so forth.
9 But anyway, the grower didn't want, if you will, a
10 stranger coming up there so they, you know, obviously 1:44PM
11 refused that. And then even if they were to agree for
12 us to soil sample, we would take our soil samples to
13 the fence line and hand it over to CDM.

14 Q Do you know what CDM was going to do with them?

15 A You know -- 1:44PM

16 MS. WEAVER: To the extent that anything
17 you would know about that was communicated to you in
18 the meeting that we were talking about, I will
19 instruct you not to answer.

20 MR. GRAVES: That's the same fight that's 1:44PM
21 part of the protocol that CDM would have been
22 handling these samples as part of the sampling
23 process.

24 MS. WEAVER: I've been instructed to stand
25 on my objection. 1:44PM

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1 MR. GRAVES: Okay. Well, we'll certify 1:44PM
2 the question then.

3 MS. WEAVER: Okay.

4 Q And to the extent that it doesn't fall within the
5 area that your attorney has objected to and instructed 1:44PM
6 you not to answer, please answer my question. What was
7 CDM going to do with the samples?

8 A They was going to take them to the lab, send them
9 off to a lab and I don't know -- I'm not clear what lab
10 but it would be sent off to a lab. 1:45PM

11 Q Did you go to each of the farms that were on your
12 list?

13 A Yes, sir, I did.

14 Q Did CDM go with you to each farm?

15 A No, because the first, the first couple of farms 1:45PM
16 we went to were just, you know, we were totally refused
17 and I'm trying to remember how it all, how it all shook
18 out there but me and John were told to go to a couple,
19 two or three farms and just see if we could get
20 permission because we didn't have our tools or nothing 1:46PM
21 to do it with then, just to see if we could get
22 permission to do it and then we were to meet up with
23 CDM and go do the work but the farms turned us, you
24 know, turned us down, so.

25 Q Did you get to every single farm on the list? 1:46PM

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1 A Eventually we did. 1:46PM

2 Q Over what period of time did you do that?

3 A It took a while. I mean, it took maybe a couple
4 weeks, maybe.

5 Q How many farms did CDM accompany you to? 1:46PM

6 A That I can remember, maybe just a couple that they
7 actually sat out on the side of the road. Other than
8 that, I think they was waiting in another point in town
9 or a location or intersection or something and we was
10 to call them and tell them whether they could come on 1:46PM
11 or not.

12 Q And you knew where they were located?

13 A I believe we did it seemed like, but we at least
14 had a phone number to call them to let them know.

15 Q How many folks from CDM were there? 1:47PM

16 A That would vary but I'd say three, four.

17 Q Is that also the same number that would go out to
18 the farm at the couple, two or three farms, that they
19 went to?

20 A Yeah. 1:47PM

21 Q Was it your understanding that had a grower
22 granted permission that CDM would actually conduct the
23 sampling or were you still going to conduct some or all
24 of the sampling?

25 A You know, I don't know, because it was their 1:47PM

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1 expertise. The way I understood it, if they had 1:47PM
2 permission to come on and help us, because I wasn't
3 real clear on what they were asking us to do. If CDM
4 would have been allowed on, I probably would have been
5 more of a follower than a leader on that deal. 1:47PM

6 Q How did it get communicated to you ultimately that
7 there was going to be a meeting with some of these
8 growers in Kansas, Oklahoma?

9 A I don't remember how I was notified about the
10 meeting. I don't know that it was a secret, I just 1:48PM
11 don't remember how I was told about it.

12 Q Do you remember who told you about it?

13 A I'll blame it on John Littlefield. Me and him ran
14 together on that time period so I'm assuming between
15 one of us, one of us knew it. 1:48PM

16 Q Were any of the farms that were, that were on your
17 list to go conduct this sampling, was there any overlap
18 with any of the farms that you had done your random
19 sampling on back in 2003 or 2004?

20 A You know, I don't remember the ones I did back 1:48PM
21 then so it would be kind of hard for me to answer that
22 question.

23 Q As you sit here today, you don't know whether
24 that's true or not true?

25 A Exactly. I don't know if it's true. 1:48PM

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1 Q Who all was at the meeting in Kansas, Oklahoma? 1:48PM

2 A You know, the best I can remember, Mr. Terry
3 Peach, Dan Parrish, and me and John Littlefield. And
4 then the poultry growers, of course. And then I'm sure
5 there was some other people in the room, I just, you 1:49PM
6 know, don't recognize them or know who they were.

7 Q Were there any other poultry inspectors in the
8 room?

9 A There might have been one other. It seemed like
10 maybe we had one of our poultry inspectors with us, 1:49PM
11 Randy Thompson.

12 Q What area does Randy have?

13 A You know, I don't know his counties. He's down
14 south of me but there's Foster Johnson south of me then
15 there's Randy Thompson. 1:49PM

16 Q Further south?

17 A Uh-huh.

18 Q Foster Johnson is the name of the other one?

19 A Yes, sir.

20 Q Are there four poultry inspectors? 1:50PM

21 A Yes.

22 Q Are they all called poultry inspectors?

23 A You know, I'm assuming they are.

24 Q Do you all have occasion to inspect any properties
25 for any reason other than related to poultry or poultry 1:50PM

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1 litter? For example, you talked about poultry 1:50PM
2 carcasses and having some responsibility in that area.

3 Do you have responsibility for any other types of
4 animals other than poultry?

5 A I think sometimes I've had to do carcass disposal 1:50PM
6 for cattle or horses, deer, when the state inspector
7 couldn't go and do it for whatever reason. If it was
8 in my territory they might have me go do that.

9 Q Who is the state inspector?

10 A Then it was Vinny McCullough. I'm not correct on 1:51PM
11 the spelling. And now it's Keith Smith, Vinny no
12 longer works for us.

13 Q And so the only time that you would deal with
14 animals other than poultry would be if there was some
15 kind of issue with the state inspector getting there? 1:51PM

16 A Correct.

17 Q Who asks you to go deal with those issues whenever
18 they come up?

19 A It would be from Dan Parrish.

20 Q Do you know how he finds out about it? 1:51PM

21 A About what?

22 Q About a situation like that where you've got to go
23 dispose of a cattle carcass?

24 A It would be a complaint called in.

25 Q Do those types of complaints also come to the 1:51PM

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1 Department of Agriculture? 1:51PM

2 A I'm assuming they do.

3 Q Do you know what agency or what division of the
4 state that Keith Smith works for? Is it Department of
5 Agriculture? 1:52PM

6 A Yeah, the AEMS Division.

7 Q Okay.

8 A The same division I work for.

9 Q What does AEMS stand for?

10 A Agricultural Environmental -- 1:52PM

11 MS. STEWART: Management Service.

12 A -- Management Services.

13 Q Oh. Is Keith just in a different area than you
14 are?

15 A Keith is what they call the capital inspector. He 1:52PM
16 takes care of the hog operations and then does the
17 cash -- not cash crop, but the complaints for
18 livestock.

19 Q You also mentioned deer, which are not livestock,
20 so are you talking about deer that people keep or 1:52PM
21 raise?

22 A No, the deer complaint I went on was from a
23 slaughter house.

24 Q Okay.

25 A That they had just dug a hole and throwed their 1:53PM

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1 deer carcasses in there. It wasn't done right and it 1:53PM
2 got turned in on a complaint.

3 Q To the extent that you deal with these other
4 animals, it's all complaint driven?

5 A Yes, sir. 1:53PM

6 Q And comes through Mr. Parrish?

7 A Yes, sir.

8 Q Back to the meeting in Kansas, Oklahoma, what was
9 the purpose of that meeting as far as you understood it
10 to be? 1:53PM

11 A Maybe just to help answer some questions that me
12 and John, you know, maybe didn't have the knowledge to
13 or ability to answer the questions they were asking.

14 Q By "they" do you mean growers?

15 A Yes, sir. 1:53PM

16 Q Who was leading the meeting?

17 A Mr. Peach.

18 Q And who was attempting to answer the questions and
19 communicate answers to the growers?

20 A I guess Mr. Peach. 1:54PM

21 Q What were the growers' questions at the meeting?

22 A I wouldn't remember them all.

23 Q Well, to the extent you remember them is all I'm
24 asking for.

25 A Maybe just, you know, why and the why being more 1:54PM

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1 why this way type question. 1:54PM

2 Q Any others that you remember?

3 A No, I mean.

4 Q How long was the meeting?

5 A Good guess, maybe an hour. That's guessing. 1:54PM

6 Q What was Mr. Peach's response to those kinds of

7 questions?

8 A I don't remember them.

9 Q You don't remember anything about it?

10 A I don't remember his responses. 1:54PM

11 Q Do you remember what any responses from any

12 participants in the meeting were?

13 A No, I don't remember their response enough to

14 quote it back. I mean, I don't know.

15 Q So is it your testimony that to this day you don't 1:55PM

16 know why the sampling was done or why it was done the

17 way it was done?

18 A Correct.

19 Q In other words, the questions the growers were

20 asking? 1:55PM

21 A Correct.

22 Q You still don't know?

23 A I don't. I don't know. I wasn't told.

24 Q Did you feel like you understood Mr. Peach's

25 communications to the growers in that regard? 1:55PM

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1 A That I what? I'm sorry. 1:55PM

2 Q Did you understand what Mr. Peach's response was
3 to the grower -- growers whenever they asked those
4 questions?

5 A Did I understand his response? 1:55PM

6 Q Did you sit through the whole meeting?

7 A Yeah, I did.

8 Q Did you hear what Mr. Peach said?

9 A Yes, I did, I don't remember what he said.

10 Q Okay. You remember what some of the questions 1:55PM
11 were and I'm just trying to make sure, you don't
12 remember what any of the answers were?

13 A No, I don't.

14 Q Did you walk out of that meeting that day feeling
15 like you understood the answers to those questions or 1:56PM
16 is it just the case that sitting here today a couple
17 years later you don't remember?

18 MS. WEAVER: Object to form.

19 A Excuse me again? I'm sorry.

20 Q Did you understand the questions and the answers 1:56PM
21 to those questions? In other words, the purpose of the
22 meeting when you walked out of the meeting two years
23 ago?

24 A I don't remember the questions asked or the
25 responses. 1:56PM

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1 Q That's not my question. My question was: Did you 1:56PM
2 understand when you walked out of there?

3 A And since I don't remember the questions or
4 answers, it's hard for me to say that I understood
5 them. 1:56PM

6 Q Did you walk out of the meeting still scratching
7 your head wondering why you were doing what you were
8 doing?

9 A Yeah, probably confused.

10 Q So do you think the growers were still confused, 1:56PM
11 too, at the end of that meeting?

12 A I can't speak for them.

13 Q Do you think they have more knowledge or some
14 special understanding of Mr. Peach's communications
15 than you do? 1:57PM

16 MS. WEAVER: Object to form.

17 A Possibly could be.

18 Q Okay. Do you remember any of the names of the
19 growers that attended that meeting?

20 A No. I think some of them were on that list. 1:57PM

21 Q Did you ever -- I want to show you a copy of a
22 memorandum I marked as Exhibit 9 and ask you if you
23 have ever seen this memorandum?

24 A I vaguely remember something like this.

25 Q Do you think you've seen it before? 1:58PM

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1 A It looks somewhat familiar. 1:58PM

2 Q Does this include some information about the
3 protocol, the planned protocol at least coming out of
4 that meeting in May of 2005? Referring specifically to
5 pages two and three of the three-page exhibit, the 1:59PM
6 attachment to the memo?

7 A It looks like a -- I mean, it ain't the protocol
8 that we was given from the meeting, it looks more of a
9 revised portion of it.

10 Q Would you have participated in any meetings where 1:59PM
11 the protocol was revised following the meeting in
12 Kansas?

13 A No.

14 Q Do you remember the protocol being revised in this
15 manner? I mean, I know you're looking at the document 1:59PM
16 right now but I'm just asking: Do you remember that it
17 was, in fact, revised?

18 A It looks familiar like that, that that was part of
19 what come out of the meeting was to revise the original
20 protocol. 1:59PM

21 Q Do you remember why it was revised?

22 A Other than, you know, the growers' concerns.

23 Q Does this document express some of the questions
24 that the growers asked? It says question and answer.
25 I'm not trying to trick you, I'm asking were those 2:00PM

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1 questions actually, in fact, questions that the growers 2:00PM
2 were asking? Does this help refresh your memory?

3 A Yeah, it does, it does. Split samples. I mean,
4 there's some stuff on here that I can remember being
5 brought up. 2:00PM

6 Q As you look through this list of questions, does
7 that help you in any way remember what Mr. Peach's
8 responses verbally were at that meeting that day?

9 A No, because I felt like -- it seemed like the
10 questions that were asked, I don't know that Mr. Peach 2:00PM
11 was in a position to say, you know, that this is what
12 we can change or this is what we can't. I felt like it
13 was something that was being considered or would have
14 to be considered, you know, later.

15 Q Did you have anything to do with distributing any 2:01PM
16 of this -- let me refer specifically to the memo
17 itself. In the last paragraph it reads that the
18 poultry inspectors, John Littlefield and David Berry,
19 will be in contact with you this week to set up
20 appointments for collecting soil and poultry waste 2:01PM
21 samples beginning the week of May 23rd. Did you have
22 anything to do with distributing the memorandum, which
23 looks like it's addressed to growers, registered
24 poultry growing operations?

25 A Right. 2:01PM

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1 Q Distributing that to them? 2:01PM

2 A Not personally, no.

3 Q What about the attachment to the memo, would you
4 have distributed any of that information to them?

5 A No. 2:01PM

6 Q Okay. Do you know whether all registered poultry
7 feeding operations received this memorandum or whether
8 it was only sent to the people that came to the
9 meeting?

10 A I would assume it would have been only the ones 2:02PM
11 that were on the list to be sampled.

12 Q Okay. Do you know whether everyone that was on
13 the list showed up to that meeting?

14 A I wouldn't know. I mean, I'm pretty sure that the
15 big part of that list the people were there, but I 2:02PM
16 don't -- it seemed like I recall maybe one or two
17 didn't show that they thought would be there.

18 Q The last paragraph of Exhibit 9 again it states
19 that you're going to be in contact with them beginning
20 the week of May 23rd. Do you know whether, in fact, 2:03PM
21 those appointments were set up and those samples were
22 collected that week?

23 A You know, Julie Anderson, what this references is
24 one of John's growers and --

25 Q Well, let's leave the notation aside, I'm just 2:03PM

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1 talking about that the memo says, at least, and you can 2:03PM
2 tell me whether, in fact, it occurred, the memo says
3 that poultry inspectors, John Littlefield and David
4 Berry, will be in contact with you this week to set up
5 appointments for collecting soil and poultry waste 2:03PM
6 samples, right?

7 A Right.

8 Q Do you know whether, in fact, you did communicate
9 with growers during that week of May 23rd of 2005 and
10 set up those types of appointments? 2:03PM

11 A I do know that that we did try to set up
12 appointments. It seemed like we had went down part of
13 our list when the Little Kanas meeting was called and
14 we was running into some noes so that's why they called
15 the meeting. And then after that meeting, we went to 2:04PM
16 try the others on the rest of the list and I think
17 that's where this was started right here. That's where
18 we went to try the rest of the list. And I'm not
19 familiar, I mean, I know you don't want me to pay
20 attention to that, but I do know that after the meeting 2:04PM
21 we did go to the rest of the farms and request and even
22 with the amendment we got refused.

23 Q Okay. So you were still unable to go out and
24 collect these samples even after the meeting in Kansas?

25 A Yes, but we did make contact with the rest of our 2:04PM

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1 list. 2:04PM

2 Q Are you aware of any situation where warrants were
3 obtained or attempted to be obtained to go out and get
4 those samples?

5 A Yes. 2:04PM

6 Q Were you involved in that?

7 A I was going to be.

8 Q Had you ever been involved in a situation
9 previously where warrants were obtained to go in and
10 collect samples on a poultry grower's property? 2:04PM

11 A No.

12 Q Had you ever been involved in any kind of
13 situation where warrants were obtained when there
14 hadn't been a complaint against anybody of doing
15 anything wrong or committing any violations? 2:05PM

16 A No.

17 Q Were you ever told what the reason for going and
18 trying to obtain warrants was?

19 A To collect the soil and litter samples.

20 Q And who communicated that information to you? 2:05PM

21 A I just pretty much probably assumed that more than
22 anything, but seemed like we had a meeting -- no, it
23 just seems like I probably more assumed it than was
24 told it.

25 Q To what degree were you involved in getting the 2:05PM

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1 warrants? 2:05PM

2 A I wasn't. I mean, I was -- we was -- seemed like
3 we were in Little Kansas and we was supposed to go get
4 a warrant or the deputy or sheriff or somebody was
5 supposed to go to the courthouse in Delaware County and 2:06PM
6 get a warrant and I can't remember the whole details
7 but it didn't, it didn't happen.

8 Q Were you personally involved in obtaining or
9 serving any warrants on any growers?

10 A No, sir. 2:06PM

11 Q Had you and Mr. Littlefield ever ridden out to
12 farms together before?

13 A Yes, sir.

14 Q On what occasions would you and Mr. Littlefield
15 have gone to farms together previous to this what we'll 2:06PM
16 describe as the sampling event in 2005?

17 A When I first started with the Department of Ag,
18 Dan Parrish had me ride with John some and some of the
19 maps that I would draw or whatever that was I was
20 doing, were in John's territory also but I rode with 2:06PM
21 John there.

22 Q And this is back before you were a poultry
23 inspector?

24 A Yes, sir.

25 Q Had you ever had occasion to ride with 2:06PM

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1 Mr. Littlefield to any farms after you became a poultry 2:07PM
2 inspector?

3 A Yes, sir.

4 Q On what occasion would that have occurred?

5 A Just, just where -- I don't think for whatever 2:07PM
6 reason but, you know, you would go with him maybe -- I
7 can't even remember a reason why. I mean, there
8 wouldn't have been really just a reason why other than
9 I just rode with him that day, travel, you know, palled
10 around with him that day and went to farms. 2:07PM

11 Q Did that happen frequently?

12 A No.

13 Q Had you and Mr. Littlefield ever gone out to
14 collect soil samples on any farms before together?

15 A Yeah, we did it together when we did the 2:07PM
16 previous -- the random soil sampling we paired up. He
17 helped me do mine and then I went and helped him do his
18 so we did pair up for that.

19 Q Other than the two that I think you've described
20 as -- well, I'll let you describe it. Would you 2:07PM
21 consider the 25 farm random sampling event in 2003 or
22 2004 and then the 2005 sampling with the CDM protocol,
23 would you consider those two sampling events atypical
24 compared to what you would normally do in your job on a
25 day-to-day basis? 2:08PM

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1 A Well, the CDM deal that we was -- the soil 2:08PM
2 sampling we was going to do, was nothing that I had
3 ever done or had ever really been told. It was pretty
4 new or real new.

5 Q And had you ever on any other occasion been asked 2:08PM
6 to go out and randomly select any of your growers to do
7 soil samples other than the time in 2003 or 2004?

8 A That was the only time.

9 Q Are those two occasions the only times that you
10 and Mr. Littlefield went out together and took soil 2:08PM
11 samples or attempted to take soil samples?

12 A Yeah, yeah. I might have helped. John had some
13 complaints and I may have to go help him soil sample.
14 He's got a bad knee, he had open heart surgery, so I
15 may go help him sometimes. 2:09PM

16 Q How often would that happen?

17 A Just occasionally, just occasionally.

18 Q Do you think that the growers in this 2005
19 attempted sampling, do you think that the growers
20 realized that this was something that was different 2:09PM
21 than what you had done before?

22 MS. WEAVER: Object to form.

23 A And that's why they, you know, I think kind of had
24 that, that we don't know for sure deal because it was
25 something new to them also. 2:09PM

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1 Q When you've taken soil samples yourself, had you 2:09PM
2 ever seen the results of any of those soil samples,
3 like what the soil test levels turned out to be?

4 A You know, I don't know if I've ever requested to
5 see them. I've asked, you know, when I went to take a 2:09PM
6 test just out of my own curiosity what it came back.

7 Q Do you see the results of the soil tests that the
8 growers take in order to get their plans?

9 A Yes, I do.

10 Q Do you have any idea of what percentage of those 2:10PM
11 that you ever see are in excess of 400?

12 A They don't show me one that's over 400.

13 Q So you haven't seen any that are over 400?

14 A (Witness shakes head.)

15 Q What about over 300? 2:10PM

16 A Well, if they're in a vulnerable watershed, I
17 don't see that either. I have seen soil tests that
18 would test high but it's where somebody would have, you
19 know, where they wrote their soil test down there, but
20 they're not land applying. It's where they -- because 2:10PM
21 they tested too high so they're selling their litter.

22 Q With regard to the farm management plans, I think
23 your testimony previously was that those, those farm
24 management plans and the Act that that combination is
25 what causes you to feel that a grower is in compliance 2:11PM

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1 as far as you're concerned? 2:11PM

2 MS. WEAVER: Object to form.

3 Q Is that a fair summary of what your testimony was?

4 A If he's following the law of the Act and he's got
5 a farm plan and following this farm plan he should be 2:11PM
6 in compliance.

7 Q And do you know whether that management plan is
8 something that's -- that NRCS issues in a manner that's
9 in conformance with what Oklahoma law wants to see in a
10 farm management plan? 2:11PM

11 MS. WEAVER: Object to form.

12 A I'm not qualified to know what they want or
13 expect.

14 Q Well, you're the one reviewing the farm management
15 plan when you go out there on your annual inspection, 2:12PM
16 correct?

17 A Okay, right.

18 Q What are you looking to see in the farm management
19 plan?

20 A I'm looking to see that they have an application 2:12PM
21 rate and that they have a -- what they do with their
22 dead bird disposal. Other than that, that's basically
23 all I look at for what their plan is. If they're land
24 applying, I want to know what their application rate
25 could be. 2:12PM

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1 Q Does part of your checklist also ask for an 2:12PM
2 assessment of whether the operations are in compliance
3 with the management plan?

4 A On the inspection that we do?

5 Q Correct. 2:12PM

6 A Ask if they're in compliance with the management
7 plan. I'd have to look at it again. I don't think --
8 that doesn't ring a bell. I know there's a question
9 like that but I'm not real sure which one it was
10 referencing. It would be on the second page. 2:13PM

11 Q It asks under Number 2 if you'll read the
12 question, there's a question there starts with the word
13 "is?"

14 A Is?

15 Q Just read that? 2:13PM

16 A "Is the AWMP being followed by this operation?"

17 Q Then there's a checkmark there, right?

18 A Correct.

19 Q And your choices are what?

20 A Yes or no. 2:13PM

21 Q And so that is something that you're checking
22 either yes or no on when you do your annual inspection?

23 A Whether he's on his land application if it's, you
24 know, at the rate that the plan says he can or below
25 it. 2:13PM

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1 Q And how do you make that determination on whether 2:13PM
2 their operations are in conformance with the nutrient
3 management plan? What are you doing to make that
4 determination to answer that yes or no?

5 A Whether they are -- can I look at that exhibit 2:14PM
6 again?

7 Q Yeah, that's fine. I'm not trying to hide it from
8 you, I'm just trying to make sure I don't lose track of
9 it for the court reporter.

10 A Basically it -- you're going down to do, they have 2:14PM
11 a soil test, do they have their litter test and then
12 their application rate, which down here it says
13 recommended application rate, which is in their plan.
14 That tells them whether they can put down one ton, two
15 ton, three ton to an acre. 2:14PM

16 Q Right.

17 A And then basically that's it and then is their
18 plan to date or out of date.

19 Q Right, there's questions that ask all that but
20 then there's also a question that says is the AWMP 2:14PM
21 being followed by this operation, yes or no?

22 A And the way I've interpreted that question is do
23 they have a current soil test, yes, do they have a
24 current litter test, yes, is their plan up to date,
25 yes. That's how I've interpreted that question. 2:14PM

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1 Q And did anybody -- how did you learn that that's 2:15PM
2 the way to interpret it?

3 A That's just how I've interpreted it. I didn't
4 learn it. That's just how I assumed that question is.
5 I've never asked what does that question mean. 2:15PM

6 Q Have you -- I think I asked you at the outset
7 whether you were aware of any of the growers in your
8 territory that you felt were out of compliance right
9 now and I think your answer was in the negative,
10 correct? 2:15PM

11 A Right.

12 Q So as of now if you were inspecting those farms
13 that box would be checked yes, is that what you're
14 telling me?

15 A If they have a current -- if they have a current 2:15PM
16 litter test, a current soil test and their plan is up
17 to date or they had a letter that they've applied to
18 have a plan.

19 Q What about if you've received a complaint?
20 There's a portion of this checklist that allows you to 2:15PM
21 record that, correct?

22 A Right, right.

23 Q If there was a complaint that led you to see that
24 the nutrient management plan such as the application
25 rate wasn't being followed, would you still check that 2:16PM

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1 question yes or would you check it no? 2:16PM

2 A I would mark it yes if the complaint had been
3 closed or if there was a correction action, you know, a
4 corrective action that was took to fix the problem.

5 Q Let's talk about where you've actually observed, 2:16PM
6 if there's a situation where you had actually observed
7 that the complaint was true and it hadn't closed and
8 you're doing your annual inspection, what are you going
9 to check in that box?

10 A Well, if he's not following his plan so you would 2:16PM
11 have to mark no.

12 Q Okay. So to that degree in my example, where the
13 application rate is the complaint, you would be making
14 some type of judgment call with regard to application?

15 A Right. 2:16PM

16 Q As far as in your investigation?

17 A Right. But on their Animal Waste Management Plan,
18 if it's a complaint and it hasn't been closed, then it
19 becomes a judgment call on that question.

20 Q To your knowledge does Mr. Parrish ever go out 2:17PM
21 himself in the field and do any of these inspections?

22 A He's never went with me.

23 Q Do you believe that he utilizes the information
24 that you transmit when you conduct these inspections or
25 when you investigate these complaints in order to make 2:17PM

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1 his determinations? 2:17PM

2 A I'm sure it helps him make a decision.

3 Q Have you ever had a situation where a complaint
4 about a grower's operations led to a hearing at the
5 Department of Agriculture? 2:17PM

6 A I'm sorry, can you rephrase?

7 Q Have you ever been involved in a situation where a
8 complaint that you investigated on a poultry operation
9 ended up in a hearing with the Department of
10 Agriculture? 2:17PM

11 A Not that I can remember on a complaint, no.

12 Q Have you ever had a situation where a complaint
13 that you investigated you were asked to go back out a
14 second time and do some follow up?

15 A Yes. 2:18PM

16 Q Who would ask you to do that?

17 A That would come from Dan.

18 (Whereupon, a discussion was held off
19 the record.)

20 MR. GRAVES: I don't know what that's all 2:18PM
21 about. Is everybody still there?

22 MS. GRIFFIN: Yeah, there was just a
23 notice that I had to press a button to hold the
24 call.

25 Q Sorry for the interruption. What would be the 2:18PM

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1 types of situations where Mr. Parrish has asked you to 2:18PM
2 go back and do some follow up?

3 A It would be like if, you know, somebody had some
4 litter stacked outside and it wasn't covered, I would
5 have to go back and make sure they did cover it. If -- 2:18PM
6 I mean, that's usually one of the things that we have
7 to do or we do do that, you know, to follow up.

8 Q Have you ever found that a nutrient management
9 plan that the NRCS prepared didn't meet with what
10 Oklahoma -- with what the Act wants to see in a 2:19PM
11 nutrient management plan?

12 MS. WEAVER: Object to form.

13 A I wouldn't know. I mean, I wouldn't know what
14 they expect. I know some growers don't really -- I
15 mean, not to say they don't need it, but they sell 2:19PM
16 their chicken litter so they don't -- really the
17 plan's, nothing in there for them since they don't
18 utilize spreading litter.

19 Q Have you ever heard of any situation where a
20 grower's nutrient management plan was found to be out 2:19PM
21 of compliance with the Poultry Registration Act?

22 A No.

23 Q Are you able -- we've already talked about
24 contraction of poultry houses, are you able to grow
25 poultry in the State of Oklahoma without being 2:19PM

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1 registered? 2:20PM

2 A No.

3 Q Is a poultry company allowed to contract with a
4 grower who doesn't have a registered farm?

5 A They can't do that either. 2:20PM

6 Q Does any part of your job deal with oversight or
7 looking at the application of commercial fertilizer?

8 A No, it does not.

9 Q Do you know why not?

10 A I have no idea. 2:20PM

11 Q Does it make any sense to you that poultry
12 litter -- I mean just asking for your opinion, that
13 poultry litter is something that you're charged with
14 overseeing and that commercial fertilizer is not on
15 these farms? 2:20PM

16 MS. WEAVER: Object to form.

17 A It doesn't bother me. My job is to --

18 Q I didn't ask if it bothers you, I was asking you
19 if made any sense to you or if you knew of a reason why
20 that would be the case? 2:20PM

21 A I haven't thought much of it.

22 Q Do you know of a reason why a commercial
23 fertilizer isn't regulated and poultry litter is on
24 these farms?

25 A I wouldn't know. 2:21PM

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1 Q Are you aware of any Oklahoma laws that -- and 2:21PM
2 I've just asking for your knowledge, I'm not saying
3 there is or there isn't, are you aware of any Oklahoma
4 law that requires a farmer or a landowner to fence his
5 cattle out of streams or keep the cattle out of 2:21PM
6 streams?

7 A Not to my knowledge.

8 Q In the time that you raised cattle, were you aware
9 of any regulations that required you to do that?

10 A No. 2:21PM

11 Q Did you let your cattle go in streams and drink
12 from time to time?

13 A They go to the pond to get a drink.

14 Q And your travels through your territory, do you
15 ever see cattle in streams? 2:21PM

16 A Yes.

17 Q Do you personally believe that cattle can cause
18 harm to water?

19 A Do I personally believe it? I don't have enough
20 education to know whether they do or whether they 2:22PM
21 don't.

22 (Whereupon, a discussion was held off
23 the record.)

24 MR. TUCKER: John Tucker back for a little
25 bit. 2:22PM

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1 Q All right. Do you know whether cattle can cause 2:22PM
2 any kind of erosion on stream banks?

3 A I don't know if they can or can't.

4 Q Did you ever observe any effects of cattle along
5 stream banks when you were raising cattle? 2:22PM

6 A Along stream banks?

7 Q Right. Erosion.

8 A I've seen them stand around the pond.

9 Q Have you ever seen what their weight and them
10 stamping along a creek bank could do? I'm just asking 2:22PM
11 whether you have.

12 A No.

13 Q Okay. The summer of 2006, you testified that you
14 were asked to do some GPS work?

15 A Uh-huh. 2:23PM

16 Q Who asked you to come to GPS training, was that
17 Mr. Parrish?

18 A Yes, it was.

19 Q And how was that communicated to you?

20 A Probably through a memo. 2:23PM

21 Q How long was that training?

22 A A day.

23 Q A full day?

24 A Yeah.

25 Q In Oklahoma City? 2:23PM

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1 A Yes, sir. 2:23PM

2 Q Do you know who put that training on?

3 A David Wheelock.

4 Q Who is he?

5 A I'm not real sure. He's just in our building. 2:23PM

6 Seems he knows how to run a GPS unit.

7 Q Does he work for the Department of Agriculture?

8 A Yeah, he's in that building so I guess he does.

9 Q Okay. Who all was present for the GPS training?

10 A Mr. Wheelock and myself along with the other 2:24PM

11 inspectors.

12 Q All of them?

13 A Uh-huh.

14 Q All four of them?

15 A Yes, sir. 2:24PM

16 Q To your knowledge, were the other two inspectors

17 involved in either the random sampling that was done in

18 2003 or 2004 or the attempted sampling in the summer of

19 2005?

20 A Do what? 2:24PM

21 Q To your knowledge, were either of the other two

22 poultry inspectors -- I know you've already testified

23 that you and Mr. Littlefield were involved in some

24 random sampling, what you called the random sampling,

25 2003 or '04? 2:24PM

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1 A Okay. 2:24PM

2 Q And you were also involved in the attempted
3 sampling in 2005, correct?

4 A Right.

5 Q Were the other two poultry inspectors involved in 2:24PM
6 either of those sampling attempts or sampling events?

7 A Not the latest but the one where we just randomly
8 went when all inspectors had to sample.

9 Q Did they -- did each of you have the
10 responsibility of sampling your own territory or were 2:25PM
11 you all sampling some selected territories?

12 A No, we had to do it in our territory.

13 Q So Mr. Foster Johnson would have had 25 farms in
14 his area and Randy Thompson would have 25 farms in his
15 area? 2:25PM

16 A Correct.

17 Q And I think you said but I want to make sure I
18 understand, that the 2005 sampling attempt that we've
19 covered, which resulted in the Little Kansas meeting,
20 was any inspector other than you and Mr. Littlefield 2:25PM
21 involved in that one?

22 A In 2005?

23 Q 2005. The one we talked about with CDM?

24 A Yeah, it was just me and John and then it seems
25 like Randy Thompson was with us occasionally. I think, 2:25PM

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1 I think he went with us. Seemed like he was with us 2:26PM
2 because if we was to do it, if the farm was to allow us
3 on there but not CDM, it was going to be a workload for
4 two guys and seemed like Randy went with us in case we
5 was able to sample, he could assist us in sampling. 2:26PM

6 Q Were any of those farms in Mr. Thompson's
7 territory?

8 A No, sir.

9 Q Do you know whether or not Mr. Thompson attended
10 any of the planning meetings or the -- or the Little 2:26PM
11 Kansas meeting?

12 A I believe he was at the Little Kansas meeting, if
13 I remember correctly. I think he was with us there.

14 Q Do you have any idea how Mr. Thompson was going to
15 assist if he had not been involved in the planning 2:26PM
16 meeting where the protocol was covered?

17 A Just help us dig a hole, maybe pack
18 some equipment. You know, just help us. Like I said,
19 John has a bad knee and he's had open heart surgery
20 and, you know, I guess just to help us pack some 2:27PM
21 equipment.

22 Q Well, I was just asking because this was a
23 different protocol than what was normal and if
24 Mr. Thompson wasn't involved in covering that protocol,
25 I was curious how he was going to be of assistance to 2:27PM

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1 you. That was the reason for the question. 2:27PM

2 A I don't know.

3 Q Back to summer of 2006, all four inspectors
4 received some GPS training. What was then done, if
5 anything, after you received the GPS training? What 2:27PM
6 was the purpose of that training?

7 A It seemed like it was for the purpose of -- for
8 maybe the state veterinarian for Avian flu, disease
9 break out, just where they could locate maybe. I'm not
10 real sure. I never really asked why I'm doing it, I 2:28PM
11 just did it.

12 Q Which areas or territories or farms were you asked
13 to go GPS?

14 A My territory.

15 Q And what were you asked to GPS in your territory? 2:28PM

16 A The poultry farm entranceway.

17 Q All of them?

18 A Uh-huh.

19 Q Every farm in your territory?

20 A Every registered poultry operation in my 2:28PM
21 territory.

22 Q Do you know whether or not that's what the other
23 inspectors were also asked to do in their territories?

24 A I believe so.

25 Q What did you do with the GPS coordinate 2:28PM

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1 information that you collected on your GPS device after 2:28PM
2 you went out and did this?

3 A We'd just take it into Oklahoma City and Mr.
4 Wheelock, the gentleman who trained us to run the
5 machine, would download it on his computer, I guess. 2:29PM

6 Q Do you know what he did with it from there?

7 A I don't know.

8 Q Do you have any idea where he kept all that
9 information on that computer?

10 A I wouldn't know. 2:29PM

11 Q Were you ever asked at any time not to -- to make
12 sure not to dispose of documents or not delete e-mails
13 or other things off of your computer?

14 A No.

15 Q No one ever asked you to do that? 2:29PM

16 A Nobody asked or told me.

17 Q Okay. Do you know whether or not any other
18 sampling attempts have been made on any farms since
19 2005 for any of the farms in your territory by the
20 Department of Agriculture? 2:29PM

21 A Not that I'm aware of.

22 Q So you haven't been asked to participate or assist
23 in any other --

24 A It just kind of died down and went away. Nobody
25 ever said it's not going to happen or nobody told us, 2:30PM

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1 you know, it's not going to happen. It just didn't 2:30PM
2 happen.

3 Q Do you know whether -- what any of the results of
4 any of the sampling that has occurred on any of these
5 farms was, do you know what the results were? 2:30PM

6 A I don't have a clue what they were.

7 Q Have you ever been told that any of the samples
8 revealed any hazards or dangers to your health?

9 A No.

10 Q Have you ever been told that any of the samples 2:30PM
11 revealed any type of pollution or problems with any of
12 the waters in Oklahoma?

13 A No, sir.

14 Q Have you been told to keep a look out and make
15 sure that certain corrective actions are taken on any 2:30PM
16 of these farms following any of these sampling
17 activities?

18 A No, sir.

19 Q Has your job or your day-to-day job changed in any
20 way following any of these sampling activities? 2:30PM

21 A No.

22 Q Did you have to put off parts of your job, in
23 other words some of the annual inspections that you
24 would normally go out and do in a week, did you have to
25 set those aside in order to go do these -- the two 2:31PM

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1 sampling activities we've talked about, the 25 random 2:31PM
2 and the one that resulted in the Little Kansas meeting?

3 MS. WEAVER: Object to form.

4 A It never interfered in anything that I was doing
5 at the time. 2:31PM

6 Q Did you have to reschedule anything or juggle
7 things around to do that?

8 A No job-wise, no.

9 Q Do you have any growers in your territory that
10 raise birds for George's? Are you familiar with who 2:31PM
11 George's is?

12 A Uh-huh. I'm just trying to think if I have any of
13 those farms now. You know, I think I do, but I would
14 have to look, double check.

15 Q To your knowledge, have any of those farms been 2:32PM
16 found out of compliance by you in any of your annual
17 inspections or investigations of complaints?

18 MS. WEAVER: Object to form.

19 A You know, again, it's been a while since I've done
20 my inspections. We're just now fixing to start back. 2:32PM
21 I don't -- I don't think so. Not that I'm aware of.

22 Q Did you meet with anyone to prepare for your
23 deposition testimony today in advance of the
24 deposition?

25 A Yes, I did. 2:32PM

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1 Q Who did you meet with? 2:32PM

2 A I met with Janet Monday morning.

3 Q Is that it?

4 MS. WEAVER: In all fairness, I was in the
5 same meeting. I just wanted to let you know. I was 2:32PM
6 there and Holly was there, Sharon Gentry and Rick
7 Garren was there for a very small amount of time.

8 Q Okay. Is that your recollection?

9 A Yeah, that was it.

10 Q Have you had any meetings to prepare for your 2:33PM
11 deposition besides that one?

12 A No, sir.

13 Q How long was that meeting?

14 A I don't know. Wasn't very long. Hour and a half,
15 maybe an hour. 2:33PM

16 Q Were you asked to review any documents or did you
17 review any documents to prepare today?

18 A No.

19 MR. GRAVES: Okay. That's all my
20 questions. Pass the witness. 2:33PM

21 MS. LONGWELL: I've got questions for you
22 but would you like to take a break before we get
23 started?

24 THE WITNESS: If you don't care.

25 MS. LONGWELL: I'm fine with that. 2:33PM

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1 THE VIDEOGRAPHER: We are off the record. 2:33PM

2 The time is 2:33 p.m.

3 (Following a short recess at 2:33 p.m.,
4 proceedings continued on the record at 2:39 p.m.)

5 CROSS EXAMINATION 2:33PM

6 BY MS. LONGWELL:

7 Q Mr. Berry, my name is Nicole Longwell. We met
8 earlier this morning. I'm here on behalf of Peterson
9 Farms today and I do have a series of questions I'd
10 like to ask you. Unfortunately because I'm going 2:41PM
11 second, it may be we may jump around a little bit more
12 than Mr. Graves did because I may have some follow up
13 questions to what he's asked but I also have my own
14 questions.

15 A Okay. 2:41PM

16 Q All right. Mr. Berry, would you consider yourself
17 the conduit for information from ODAFF to the poultry
18 growers in your area?

19 A The what?

20 Q Like the person who delivers the information from 2:41PM
21 ODAFF?

22 A Yes, ma'am.

23 Q Okay. So if --

24 A The messenger you mean?

25 Q Right. Basically like a messenger? 2:41PM

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1 A Yes, ma'am. 2:41PM

2 Q So if the growers have questions about what ODAFF
3 requires of them, would they be most likely to ask you
4 that question?

5 A Yes, ma'am. 2:41PM

6 Q Would you say that you're the man on the ground in
7 enforcing the laws of the State of Oklahoma with
8 regards to poultry growing operation?

9 MS. WEAVER: Object to form.

10 A I don't enforce no law, I just report what I find, 2:42PM
11 what I see back to my office and then they do the
12 enforcing.

13 Q Let me ask some questions about that. So you've
14 been given directives of what your responsibilities are
15 as a poultry inspector, correct? 2:42PM

16 A Yes.

17 Q And part of those responsibilities are to verify
18 the poultry grower's compliance with the laws of
19 Oklahoma, is that correct?

20 A Yes, ma'am. 2:42PM

21 Q Okay. So in the sense that you're the person on
22 behalf of ODAFF who is out there verifying whether or
23 not the poultry growers are following the laws of the
24 State of Oklahoma, would you agree with that?

25 A Right. 2:42PM

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1 MS. WEAVER: Objection. 2:42PM

2 Q Earlier you indicated that you had been provided
3 the poultry Act, do you recall that?

4 A Yes.

5 Q I am going to provide that -- a document. I want 2:42PM
6 you to let me know you if you've seen this document
7 before or seen the contents of this document before,
8 let me say it that way. Let me just hand this to you
9 first and see if you recognize what I'm handing you.

10 Take a moment to look through it. 2:43PM

11 A I've seen this before.

12 Q And would this -- was this the poultry Act that
13 you were referring to that you had seen before?

14 A No, ma'am.

15 Q No, it's not. When had you seen this document 2:43PM
16 before?

17 A Well, I just seen it the other day in my
18 briefcase. I've got several things titled, you know,
19 Acts and stuff, but I can't describe the actual Act
20 that I think is the actual Act but it don't have all 2:43PM
21 this heading like that.

22 Q Okay. So it doesn't have all the legal mumbo
23 jumbo that you see at the top of this document?

24 A (Witness shakes head.)

25 Q Have you reviewed this before? 2:44PM

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1 A I've looked through it. 2:44PM

2 Q Would you say you've looked through it with enough
3 sufficiency that you could talk about its contents?

4 A To some extent I'm sure I can.

5 Q Let me mark this as Exhibit 10 to your deposition. 2:44PM
6 I want to direct you to Section 10-9.7, which is six
7 pages in, I believe. It begins at the bottom of the
8 page.

9 A Okay.

10 Q We'll wait until your counsel has a copy of the 2:44PM
11 same document before I ask these questions. Let's look
12 at Section B which is actually on the next page.

13 A Okay.

14 Q Section B says that -- it states that, "The
15 criteria for best management practices shall be 2:45PM
16 promulgated by rules by the board and shall include but
17 not be limited to the following." And then there's a
18 series of paragraphs, numbered paragraphs and letter
19 paragraphs, but it does say the criteria for best
20 management practices, correct? 2:45PM

21 A Yes, ma'am.

22 Q Okay. Subsection one states that, "There shall be
23 no discharge of poultry waste or poultry to waters of
24 the State," do you see that?

25 A Right, yes. 2:45PM

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1 Q Are you familiar with this statement of law? 2:45PM

2 A Not of the discharge. I mean, I've never really
3 dealt with much of the discharge of poultry waste.

4 Q What do you understand discharge to mean?

5 A Like, like water flooding into something else. 2:45PM

6 Q Okay. So you're not familiar with that aspect of
7 this particular Act, is that accurate?

8 A Right.

9 Q Do you have an understanding of what poultry waste
10 means in this sentence? 2:46PM

11 MS. WEAVER: Object to the form.

12 A I guess. I mean, other than the discharge word, I
13 mean --

14 Q Tell me what your understanding, if you have one,
15 of what poultry waste means. 2:46PM

16 A Just the poultry litter that comes out of the
17 poultry barns.

18 Q So we're talking about poultry litter?

19 A Uh-huh.

20 Q If I refer to in the rest of your deposition 2:46PM
21 poultry litter, we'll be talking about the same thing?

22 A Okay.

23 Q Is that accurate?

24 A Right, yes.

25 Q We'll be talking about what comes out of the barn? 2:46PM

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1 A Yes. 2:46PM

2 Q The hulls and excrement?

3 A Right, right.

4 Q Okay. Do poultry growers that you encounter, do

5 they use the term poultry waste to refer to what comes 2:46PM

6 out of their barn?

7 A They refer to it as litter.

8 Q Would you say whether a poultry operation is

9 causing pollution to the waters of the State of

10 Oklahoma is within your jurisdiction as an ODAFF 2:47PM

11 inspector?

12 A No.

13 Q Is it your understanding that Oklahoma law

14 requires registered poultry operations to utilize best

15 management practices? 2:47PM

16 A Yes.

17 Q Do you understand -- where would those -- I'm

18 sorry. Where would those best management practices be

19 located that the poultry --

20 A In the Act? 2:47PM

21 Q Located in the Act?

22 A Oh, I don't know if it's in the Act.

23 Q Were would you, if you were to tell a poultry

24 grower to use best management practices, what would you

25 direct them to for those practices? 2:47PM

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1 A Not to over land apply. If their plan says two 2:47PM
2 tons an acre don't exceed that or they're out of
3 compliance, they're not following their plan. To store
4 their litter, either keep it in a poultry barn or in a
5 stack house, storage shed or get it land applied. Stay 2:48PM
6 back 100 feet from waters of the State. That would be
7 what I would consider.

8 Q Let's talk about each of those items because what
9 you told me, basically, is three items. One is apply
10 the litter at the rate that is identified in your plan, 2:48PM
11 correct?

12 A Right.

13 Q Okay. The second one was store litter --

14 A (Nods head.)

15 Q -- appropriately or land apply it appropriately? 2:48PM

16 A Uh-huh.

17 Q Correct? And then the third was when you're land
18 applying litter to follow the set backs?

19 A Yeah.

20 Q Where are the set backs typically located, what 2:48PM
21 documents?

22 A I think that's in the NRCS, like maybe 590
23 standard rule, maybe.

24 Q Have you ever seen that NRCS Code 590?

25 A Yeah. 2:49PM

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1 Q Have you reviewed it? 2:49PM

2 A A little bit.

3 Q So you think the set back associated with the
4 application of poultry litter is located in that code?

5 A I believe so. 2:49PM

6 Q Okay. And then the -- your first item that you
7 talked about was the proper application of poultry
8 litter. That's located in their Animal Waste
9 Management Plan, correct?

10 A Yes. 2:49PM

11 Q Okay. And then the storage of litter, that's
12 located in the poultry Act?

13 A No, that's in their plan, too, how they're going
14 to store their litter.

15 Q The type of facility they're using to store their 2:49PM
16 litter?

17 A Mm-hmm.

18 Q How to properly store it?

19 A Right.

20 Q Is located in the Animal Waste Management Act? 2:49PM

21 A It should be.

22 Q So would you agree with the statement that best
23 management practices as described by the poultry Act
24 are pretty much incorporated in the Animal Waste
25 Management Plan that these growers follow? 2:49PM

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1 A Right. 2:49PM

2 MS. WEAVER: Object to form.

3 Q Tell me what your understanding of the NRCS Code
4 590 is.

5 A What's my understanding of it? 2:50PM

6 Q Yes.

7 A It's basically the set back. What I've seen of it
8 is determining factor of half rate, full rate, soil
9 test results.

10 Q Have you -- are you familiar with whether or not 2:50PM
11 the NRCS has considered slope of the land that the
12 poultry litter is being applied to?

13 A It's in the 590, I believe, also.

14 Q Assuming that you're dealing with a new poultry
15 grower and they've applied for their Animal Waste 2:50PM
16 Management Plan and they're asking you for direction on
17 how to apply poultry litter because they've yet to
18 receive their plan, how would you -- you've indicated
19 that you would provide them a soil -- you would tell
20 them to get a soil test? 2:50PM

21 A Uh-huh.

22 Q You've indicated that you would ask them to take a
23 litter test, is that correct?

24 A Correct.

25 Q Okay. Now, how would they then determine what the 2:51PM

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1 proper rate of application is for their litter to their 2:51PM
2 land?

3 A Well, they would have to ask somebody that knows
4 how to figure the litter test and soil test but to do
5 the math. 2:51PM

6 Q Do you know how to do the math to help them?

7 A To some extent, but I don't do it for them because
8 I'm not trained to do that.

9 Q Okay. So could you sit down with the NRCS code
10 and their soil test or their litter test and help them 2:51PM
11 determine how much to apply to their property?

12 A I think they could take the 590 and look at it and
13 figure it out themselves, but I couldn't show it to
14 them and feel like I was good enough at telling them
15 how to do it, that I would leave them out there on 2:51PM
16 their own doing it.

17 Q Have you ever -- have you received any type of
18 training from the Oklahoma Department of Agriculture on
19 how to try to help a grower analyze the soil test, the
20 litter test and the NRCS Code 590 to determine how to 2:51PM
21 apply litter to their land?

22 A No, ma'am.

23 Q Do you ever get requests from technical -- for
24 technical assistance from commercial litter
25 applicators? 2:52PM

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1 A Commercial litter applicators. Yeah, what that 2:52PM
2 would be is mainly how to fill out a report form.

3 Q Now, you've indicated that you have gone to some
4 training, O.S.U. training classes for commercial litter
5 applicators, is that accurate? 2:52PM

6 A Most of it is more for the poultry operator.

7 Q Okay. Are the commercial litter applicators
8 within your jurisdiction as a poultry inspector?

9 A They are in my territory.

10 Q What type of -- do you ever conduct any inspection 2:52PM
11 of the records of commercial litter applicators?

12 A No, ma'am.

13 Q Now, for commercial applicators, if they're going
14 to apply litter to someone who is not a poultry
15 grower's property, that individual doesn't have an 2:53PM
16 Animal Waste Management Plan, is that accurate?

17 A More than likely they don't. They're not required
18 by law to have one.

19 Q But they are required to have a soil test?

20 A A soil test and a licensed applicator to spread it 2:53PM
21 for them.

22 Q What type of -- if you know, what type of
23 documentation does an individual who's receiving
24 poultry litter who is not a poultry grower have to
25 provide to the Department of Agriculture as to their 2:53PM

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1 activity on their own land? 2:53PM

2 A They don't, the applicator turns in all the
3 reports. All the landowner is required to do is take
4 the soil tests and give a copy of that to the
5 applicator so the applicator has to send in a report 2:54PM
6 along with a copy of the soil and litter test of that
7 application.

8 Q And who informs the individual who is receiving
9 the poultry litter for their land that they're required
10 to have a soil test? 2:54PM

11 A I mean, that's -- hopefully it's just public
12 knowledge, I guess. I mean, I'm hoping that when you
13 talk to a poultry farm about getting litter from them
14 that they inform them that, yeah, we can sell you some
15 litter but you've got to have a licensed applicator, 2:54PM
16 you know, spread it. And other than that, I don't know
17 how they would find out.

18 Q Now, in some instances have you found that there
19 are poultry growers who sell their litter to a
20 commercial applicator but never know where their litter 2:54PM
21 is going to be applied?

22 A Right.

23 Q Okay.

24 A Right.

25 Q So they wouldn't be able to have that 2:54PM

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1 communication with the person who's receiving the 2:54PM
2 litter?

3 A Exactly.

4 Q So then would it be on the commercial applicator's
5 responsibility? 2:54PM

6 A Right, when I do my inspection and the poultry
7 operator tells me that he sold his litter, it might --
8 it might have wound up at my dad's farm, example, but
9 if it was sold to a commercial applicator whose
10 brokering litter and selling it so that's the name that 2:55PM
11 appears on my inspection sheet who did he sell it to.
12 And then what that applicator did with it is sold it
13 to, you know, basically, say my dad, along with an
14 applicator report, my dad's name would show up on that
15 report. 2:55PM

16 Q Have you on occasion been aware of violations that
17 have been issued to the commercial litter applicator
18 for failure to obtain a soil test for property in which
19 they applied poultry litter?

20 A I've seen it where it's been a violation. 2:55PM

21 Q Let me hand you another document and ask you if
22 you have seen this document before?

23 A Well, I haven't seen this whole thing.

24 Q What part have, if any, have you seen of this
25 document? 2:56PM

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1 A This part right here. This part right here, table 2:56PM
2 eight.

3 Q Okay. Let's take -- let me mark this document as
4 Exhibit 11 to your deposition. And then let's take a
5 look, let's start -- let me just go ahead and look at 2:57PM
6 the first page of the document and ask you a question.

7 A Okay.

8 Q Do you see the section that says purposes?

9 A Uh-huh, yes.

10 Q The third bullet point says that one of the 2:57PM
11 purposes of this document is to minimize agricultural
12 nonpoint source pollution of service and ground water
13 resources, do you see that?

14 A Yes, I do.

15 Q Okay. Is it your understanding, Mr. Berry, that 2:57PM
16 one of the purposes of code -- the NRCS Code 590 is to
17 manage nonpoint source pollution to ground water and
18 surface water resources?

19 A Yes.

20 Q And do you know, I mean, isn't it true that Title 2:57PM
21 2, the document we just looked at of the Oklahoma
22 statutes mandates the Animal Waste Management Plans for
23 poultry growers basically requires those plans to use
24 this particular document.

25 MS. WEAVER: Object to form. 2:58PM

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1 Q Code 590? 2:58PM

2 A It talks about the best management practices so
3 that would go to this 590.

4 Q Okay. And then looking at the first page of the
5 Exhibit 11 on this Code 590 it says under criteria, 2:58PM
6 general criteria applicable to all purpose, plans for
7 nutrient management shall comply with all applicable
8 federal, state and local laws and regulations, do you
9 see that?

10 A Yes, I do. 2:58PM

11 Q Okay. So the state statutes say you've got to
12 follow best management practices, which are encompassed
13 in the Code 590, correct?

14 A Okay.

15 Q And then Code 590 says any nutrient management 2:58PM
16 plans under this code must comply with all federal and
17 state laws, correct?

18 A Right.

19 Q Let's now look at table eight that you were
20 looking at a moment ago. 2:59PM

21 A Okay.

22 Q Table eight states that it's the annual waste
23 application rates for non-nutrient limited watershed,
24 correct?

25 A Mm-hmm. 2:59PM

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1 Q So if you're looking at a non-nutrient management 2:59PM
2 -- I'm sorry, non-nutrient limited watershed, this is
3 the application rate for the application of poultry
4 litter, correct?

5 A Correct. 2:59PM

6 Q And now if you look at table nine, which two pages
7 behind, have you seen table nine before?

8 A Yes, I have.

9 Q Okay. And table nine is the annual waste
10 application rate for nutrient limited watersheds, 2:59PM
11 correct?

12 A Correct.

13 Q And the Illinois, as of, what, I think last year
14 or 2005, was designated as a nutrient limited
15 watershed, correct? 3:00PM

16 A Yes, it was, yes.

17 Q So prior to that date, it was identified as a
18 non-nutrient watershed and table eight would have
19 provided the application rates, correct?

20 A Right. 3:00PM

21 Q Have you ever heard of the term phosphorous index?

22 A Yes, I have.

23 Q Would it be fair to say that for nutrient limited
24 watersheds in the State of Oklahoma that table nine is
25 basically Oklahoma's phosphorous index? 3:00PM

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1 MS. WEAVER: Object to form. 3:00PM

2 A For parts of northeastern Oklahoma, it would be.

3 Q And what parts of northeastern Oklahoma would it
4 not be?

5 A Well, like in any territory, it would be like 3:00PM

6 Sequoyah County, Muskogee County. I mean, I would have
7 to get my map to see where the line is, but not all of
8 my counties, all of them are in the limited watershed.

9 Q Right. But for only the Illinois river watershed,
10 however, table nine would be the Oklahoma -- 3:00PM

11 A Yes.

12 Q -- phosphorous index, correct?

13 MS. WEAVER: Object to form.

14 A Yes, I see what you're saying, yes.

15 Q Looking at table nine, it is possible that if a 3:01PM
16 soil tests phosphorous at 121 to 300 and that's the
17 test of the soil, correct?

18 A Right.

19 Q That if I were an individual applying -- or a
20 poultry grower applying poultry waste to my property 3:01PM
21 that I could apply a half rate depending upon the slope
22 of the land, is that correct?

23 A Correct.

24 Q And then on the next page of this document, a half
25 rate is defined, is it not? 3:01PM

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1 A It should be in there. Yeah, it is. 3:01PM

2 Q And at the first section, right?

3 A Uh-huh.

4 Q And then it says so a half rate of phosphorous
5 would be 100 pounds of P205 per acre when surface 3:01PM
6 applied, is that accurate?

7 A 100 pounds would be half rate.

8 Q Okay. Now, is it my understanding of your
9 testimony at this point that you feel that your
10 responsibilities as the poultry inspector do not 3:02PM
11 include evaluating whether there is discharge or runoff
12 from any of these poultry farms into the water of the
13 State of Oklahoma?

14 A I think I have to evaluate it, but I don't
15 determine the end result of it. 3:02PM

16 Q Okay. And in your evaluation, what does that
17 include?

18 A Just what I see, what I observe, what the records
19 say, what the book says or, you know, what the
20 documents they provide me say. 3:02PM

21 Q So would you say that it was -- would it be a fair
22 statement then to say that your jurisdiction includes
23 confirming that a poultry grower is following their
24 Animal Waste Management Plan and the laws of the State
25 of Oklahoma? 3:02PM

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1 A Uh-huh. 3:03PM

2 Q Is that correct?

3 A Uh-huh.

4 Q And if they're doing so, then in your opinion are
5 they creating discharge or runoff in the waters of the 3:03PM
6 State of Oklahoma?

7 MS. WEAVER: Object to form.

8 A I don't know how to answer that. I mean, I think
9 if you're following what the Act says and you're
10 following your plan, you are in compliance. But, you 3:03PM
11 know, can you restate that? I confused myself.

12 Q Sure. Would you feel the need to report to anyone
13 at ODAFF that a poultry grower may be causing pollution
14 through discharge or runoff from their land into the
15 water of the State of Oklahoma if you find that they 3:03PM
16 are following their Animal Waste Management Plan and
17 the laws of the State of Oklahoma?

18 A No, I wouldn't. The only reason I would be
19 concerned of that is if I did a complaint, went out on
20 a complaint and somebody had spread litter and it was 3:03PM
21 closer than 100 foot to a pond or a creek or a stream
22 and where it's supposed to be 100 foot and they spread
23 it within 50 foot. Well, then that would be in my
24 report, not that they were in violation, that they
25 spread within 50 foot of a -- 3:04PM

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1 Q And that would be based on -- the only reason you 3:04PM
2 would be out there investigating that would be because
3 somebody made a complaint?

4 A Yes, ma'am.

5 Q So is it then your understanding that if an 3:04PM
6 applicator follows the Animal Waste Management Plan,
7 does the soil test, does the litter test and applies at
8 the rate and within the restricted setbacks, that there
9 shouldn't be any runoff from the property?

10 A You know, ma'am, I'm not qualified to say whether 3:04PM
11 there would be or wouldn't be. I just know that he
12 would be following the rules.

13 Q Okay. Based on your area, do you know what the
14 percentage of poultry growers that you inspect that
15 sell or give away their litter? 3:05PM

16 A I don't know an exact number, but I know there's
17 several that do. There's -- and there's been more in
18 the -- since the watershed has come into play, the
19 Tenkiller and the Fort Gibson watershed has come into
20 play, there's more that's selling. 3:05PM

21 Q Would you agree that there's a significant amount
22 of acreage in your area of Illinois River watershed
23 that is not receiving poultry litter?

24 A I would assume so.

25 Q Are most of the cattle operators getting their 3:06PM

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1 poultry litter from commercial litter applicators to 3:06PM
2 your knowledge?

3 A Well, they have -- they would have to be a
4 commercial applicator to get it land applied, so yeah.

5 Q Meaning as a -- if I'm a poultry grower and I want 3:06PM
6 to -- and I want to sell my litter to a cattleman, I
7 can't just take my litter over there and land apply it
8 on his behalf because I have a private poultry litter
9 application?

10 A Unless you are trading something out. Like, you 3:06PM
11 know, bartering something, hay or something, you can't
12 be hanging your shingle out making money off of it or
13 you become a commercial fertilizer.

14 Q And then I have to get the license to do that,
15 correct? 3:06PM

16 A Yeah, commercial.

17 Q Okay. Like I said, I'm just trying to make sure I
18 don't repeat questions so I'm sorry for the delay.

19 A You're okay.

20 Q Would you say that in essence you are the eyes and 3:07PM
21 ears of the State of Oklahoma in the watershed with
22 regards to poultry litter and poultry operations?

23 MS. WEAVER: Object to form.

24 A As far as regards to what the law is, yes.

25 Q So the question of what is done about your 3:07PM

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1 observations or report that someone may not be 3:07PM
2 following their Animal Waste Management Plan is handled
3 by someone else within the Department of Agriculture,
4 not you, is that correct?

5 A I just report what I see and find and somebody 3:07PM
6 else determines if there is a consequence or corrective
7 actions.

8 Q But it is part of your job to at least make
9 observations?

10 A Yes, ma'am, it is. 3:08PM

11 Q And if you feel someone is violating their Animal
12 Waste Management Plan are obligated to report that?

13 A Yes, ma'am.

14 Q Would you agree that the Animal Waste Management
15 Plan is designed to protect the natural resources of 3:08PM
16 the State of Oklahoma?

17 A Would I agree that what?

18 Q That the creation of an Animal Waste Management
19 Plan, the purpose is designed to protect the natural
20 resources of the State of Oklahoma? 3:08PM

21 A It appears.

22 MS. WEAVER: Object to form.

23 Q I'll hand you what I'm marking as Exhibit 12 to
24 your deposition. I would represent to you that I
25 believe this is a list of Peterson Farms growers who -- 3:09PM

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1 actually who have contracts with Peterson Farms at this 3:09PM
2 time.

3 A Okay.

4 Q Okay. I'd like you to look over the list and tell
5 me which of these individuals of these farms you're the 3:09PM
6 inspector, the poultry inspector for.

7 A The top two.

8 Q So Anita Andrews and Jeff Andrews?

9 A Mm-hmm.

10 Q Can you tell me if Anita Andrews' current facility 3:10PM
11 is located in the Illinois River watershed?

12 A That's a trick question because the line goes
13 right across their barns, one of their barns. I would
14 have to look at my last inspection sheet to determine
15 what I'd come up with. 3:10PM

16 Q Well, let's do that.

17 A That was a good question.

18 Q At one point in time this was a much larger farm?

19 A Yeah.

20 Q Is that your recollection? 3:10PM

21 A Yeah. It may be in the Fort Gibson. It may be
22 her husband that's in the --

23 Q I'll hand you what I'm marking as Exhibit 13 to
24 your deposition. This is an inspection checklist dated
25 April 24, 2001, correct? 3:11PM

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1 A Correct. 3:11PM

2 Q And this isn't actually one that you did?

3 A No, it's not.

4 Q But Mr. Fisher, Gary Fisher did?

5 A Right. 3:11PM

6 Q And you indicated earlier he was a poultry

7 inspector before you?

8 A Right.

9 Q You took on his responsibilities.

10 A Right. 3:11PM

11 Q Okay. Looking at this document, looking at

12 Exhibit 13, this says that it's for the producer Circle

13 A Farms, is that correct?

14 A Right. Yes, ma'am.

15 Q And underneath it it says Sam, Anita and Jeff 3:11PM

16 Andrews, correct?

17 A Right, yes.

18 Q And the number of houses on this particular

19 inspection sheet is -- checklist is eight?

20 A Correct. 3:11PM

21 Q Okay. Looking at paragraph numbered Number 1

22 where it says watershed, ground water?

23 A Uh-huh.

24 Q It says watershed where facility is located and

25 there are two numbers. 3:12PM

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1 A Uh-huh. 3:12PM

2 Q Can you tell me which watershed correlates with
3 this first number 11110103060?

4 A No, I can't.

5 Q Can you tell me which watershed correlates with 3:12PM
6 11070209100?

7 A No.

8 Q Do you know in which watershed this facility is
9 located?

10 A Well, the problem with this one is -- and, again, 3:12PM
11 I wasn't inspector when this was done, but Sam, Anita
12 and Jeff; it's Jeff is their son, Anita is the wife and
13 Sam is the husband. They've got -- they have got barns
14 in two different watersheds because it's not all in one
15 spot. They're down the road from each other. 3:12PM

16 Q Okay.

17 A And they're actually in three different locations
18 and so that's probably why there's two numbers because
19 there's probably a set that's in the -- and one of
20 these numbers, I'm sure, correlates with Tenkiller and 3:12PM
21 one correlates with Fort Gibson but the watershed line,
22 the dividing line between Tenkiller and Fort Gibson,
23 goes right over the top of one of their chicken barns.

24 Q Okay. So let's then look at a more recent -- or a
25 inspection report that you did, if we can do that? 3:13PM

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1 A Yes. 3:13PM

2 Q That might help a little bit more.

3 A Yes.

4 Q I'm on Exhibit 14. And this is an inspection
5 checklist dated February 3rd, 2003, correct? 3:13PM

6 A Yes, ma'am.

7 Q And the producer here is only indicated to be
8 Anita Andrews, Circle A Ranch, correct?

9 A Yes.

10 Q And the number of houses is two as opposed to 3:13PM
11 eight?

12 A Correct.

13 Q Okay. And once again we have a number for the
14 watershed where the facility is located?

15 A Correct. When -- before the Tenkiller, Fort 3:14PM
16 Gibson watershed come into play all I had was -- it's a
17 map and it's got -- it's like smaller watersheds and
18 it's got numbers for those little smaller watersheds
19 and that's the number that correlates with that I don't
20 know the name of it. I just -- it's a map that had 3:14PM
21 little smaller watershed within the big watershed. I
22 guess, if you will, and those numbers is what I was
23 writing down.

24 Q Who provided you this map that had the little
25 watershed numbers on it? 3:14PM

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1 A My office. 3:14PM

2 Q The ODAFF did?

3 A Yes, ma'am.

4 Q Okay. Do you still use that map today?

5 A No, I don't. And I do, if it's not in a 3:14PM

6 vulnerable watershed, but I was instructed that if it's

7 in Tenkiller that I write Tenkiller now. If it's in

8 Fort Gibson write Fort Gibson. That's the only two

9 vulnerable watersheds that's in my territory. And if I

10 have a facility in a watershed, write it on here, 3:14PM

11 Tenkiller or Fort Gibson and don't use the little

12 numbers.

13 Q So based on what you see on Exhibit 14, you can't

14 tell me which watershed these two poultry houses are

15 located in? 3:15PM

16 A I know where her houses are at. I just couldn't

17 tell you -- I'd be speculating but I'm going to say

18 that hers is in Fort Gibson.

19 Q Okay. Do you know why there was a reduction in

20 number of houses? 3:15PM

21 A Because there's three sites. There's two barns

22 down the road and there's two at her house and then

23 there's two at Jeff's house.

24 Q So sometime between 2001 when this inspection that

25 is Exhibit 13 and your inspection in 2003, they 3:15PM

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1 separated their houses? 3:15PM

2 A Yeah, uh-huh.

3 Q Okay.

4 A Yeah, yeah. I think it was quite a paperwork deal
5 there for a while. 3:15PM

6 Q Well, while we're on -- while we have Exhibit 14
7 out, under Paragraph No. 2 it says is the AWMP
8 available for review. You don't have anything marked
9 there. Do you remember why you have nothing marked
10 there? 3:16PM

11 A No. Just it's an oversight on my part because on
12 the back page, I note that AWMP is being prepared in a
13 letter from NRCS will be sent to ODA to be put in the
14 file so it was just an oversight on my part in not,
15 marking that. 3:16PM

16 Q Now, then you also, if we look at the third page
17 of this exhibit, on Paragraph No. 8 it says it's the
18 AWMP being followed by this operation and you checked
19 no and wrote out not available, is that correct?

20 A Right, because there wasn't one. 3:16PM

21 Q Do you know whether or not this particular grower
22 land applied any of the litter that came out of these
23 two barns in this inspection period?

24 A On the second page of that inspection it says
25 litter sold or given away. 3:16PM

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1 Q So she didn't land apply any of it? 3:16PM
2 A No, she sold it.
3 Q Okay. I'm going to go through these pretty
4 quickly. Let me hand you what I'm marketing as Exhibit
5 15. This is another poultry inspection checklist for 3:17PM
6 Anita Andrews, correct?
7 A Yes, ma'am.
8 Q And this one is actually dated December 8th, 2003?
9 A Yes, ma'am.
10 Q And again, we don't know which watershed with 3:17PM
11 regard to Illinois River or Fort Gibson that we're
12 actually in?
13 A Correct.
14 Q Okay. Based on what is on this inspection
15 checklist? 3:17PM
16 A Uh-huh.
17 Q Okay. And it appears from this second page that
18 she sold or gave away all of her litter this inspection
19 year, correct?
20 A To Jeff, right. 3:17PM
21 Q And then on Paragraph 8 where it says is the AWMP
22 being followed by this operation, you checked yes?
23 A Right.
24 Q Was there an AWMP in place?
25 A No, it wasn't. And it would be an oversight on my 3:18PM

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1 part because it's marked they don't have a plan yet. 3:18PM

2 Q But she's not land applying anyway, so it's not
3 really an issue, is it?

4 A She wasn't land applying. Our inspection sheets
5 have changed, too, and you get to marking yes and no on 3:18PM
6 a lot of things. If you don't slow down and stop
7 sometimes you'll mismark something.

8 Q Let me give you what I'm marking as Exhibit 16 to
9 your deposition, okay? This inspection checklist is
10 for Anita Andrews again, correct? 3:18PM

11 A Yeah there's only two pages to my --

12 Q That is all I have. I'll have to represent that
13 this is all I have with regards to this inspection
14 checklist?

15 A Okay. 3:19PM

16 Q We can talk about what's missing. The date on
17 this is March 6th, 2007, so this is this year, correct?

18 A Yes.

19 Q What sheet appears to be missing from this
20 document? 3:19PM

21 A It would be litter sold and given away.

22 Q Okay. So from these two pages you can't tell
23 whether she land applied or?

24 A Yes, I can on the front page on the date of soil
25 test. 3:19PM

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1 Q Okay. 3:19PM

2 A I'll write -- if they sell their litter, I'll
3 write sold litter.

4 Q Okay.

5 A Because then they're not required to have a soil 3:19PM
6 test. So the office will know why they don't have a
7 soil test I'll write sold litter there.

8 Q So once again she sold all her litter, at least
9 for this inspection period?

10 A Mm-hmm. 3:19PM

11 Q Even though we don't have the document, the
12 additional page that indicates that?

13 A Right, yes, ma'am.

14 Q But as to Paragraph No. 1, watershed or ground
15 water, in this instance you've indicated that the 3:19PM
16 watershed where the facility is located is Fort Gibson?

17 A Fort Gibson.

18 Q So those two houses are in Fort Gibson?

19 A Yes, ma'am.

20 Q Not in the Illinois watershed? 3:19PM

21 A Correct.

22 Q You said they have three sites, is that what you
23 said?

24 A Uh-huh.

25 Q So they have houses at three different locations? 3:20PM

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1 A Uh-huh. 3:20PM

2 Q But only -- is there another -- okay, we'll just,
3 we'll get there. Strike that question. You indicated
4 that Jeff Andrews was -- you were a poultry inspector
5 for Jeff Andrews as well, is that correct? 3:20PM

6 A Yes, ma'am, it is.

7 Q You indicated earlier in one of your answers that
8 part of the original eight houses that were a part of
9 Circle A Ranch were located in the Fort Gibson
10 watershed and part were located in the Illinois 3:21PM
11 watershed?

12 A Yeah, I mean, Anita's is Fort Gibson and Jeff is
13 going to be Fort Gibson and Sam is going to be --
14 that's the trick question because the line does come
15 through right over the top of his barns it appears. 3:21PM

16 Q Okay. So with regard to Jeff, do you know
17 which -- where his barns are located?

18 A He's in Fort Gibson.

19 Q He's in Fort Gibson so he's not in the Illinois
20 watershed? 3:21PM

21 A No, ma'am.

22 Q Do you know how many houses that Jeff is operating
23 under his license?

24 A I think two or four. I can't remember.

25 Q Let me give you the most recent inspection 3:22PM

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1 checklist for Mr. Andrews. We're on Exhibit 17. 3:22PM
2 A Okay.
3 Q Okay. Looking at Exhibit 17, it's dated January
4 23rd, 2007, correct?
5 A Yes, ma'am. 3:22PM
6 Q And the producer is identified as Jeff Andrews?
7 A Yes.
8 Q And the number of houses is four?
9 A Okay.
10 Q So those are the four houses you were talking 3:22PM
11 about that you believed to be in the Fort Gibson
12 watershed?
13 A That's what it would be.
14 Q And then looking at Paragraph No. 1 on this
15 inspection checklist, in fact, you've identified the 3:22PM
16 Fort Gibson watershed as being where this facility is
17 located?
18 A Okay.
19 Q Let me ask you just a few other questions since it
20 appears that we don't have any grower in the Illinois 3:23PM
21 River watershed that are being -- that you're the
22 poultry inspector for. You have indicated under
23 Paragraph 2 that he does, in fact, have an Animal Waste
24 Management Plan for review, correct?
25 A Yes, ma'am. 3:23PM

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1 Q And that the date of Animal Waste Management Plan 3:23PM
2 is March 18, 2005?

3 A Correct.

4 Q Is Fort Gibson a nutrient limited watershed?

5 A Yes, ma'am, it is. 3:23PM

6 Q Here you have indicated in that same paragraph at
7 the end recommended application rate of 3.1 tons per
8 acre then you say Number 5, 2.5 --

9 A Correct.

10 Q -- tons per acre. Can you explain that for me? 3:23PM

11 A In the Animal Waste Management Plan, it has a map
12 of his fields and they'll identify the fields by number
13 and without looking at it again, all the fields can
14 receive 3.1 tons per acre except for Field No. 5 and it
15 can only receive 2.5 tons per acre. 3:24PM

16 Q Let's do that. Let's look at his Animal Waste
17 Management Plan?

18 A Okay.

19 Q And show me what did you look at to come up with
20 this information on this inspection list? I'm going to 3:24PM
21 mark this as Exhibit 18. Excuse me. Have you seen
22 Exhibit 18 before to your recollection?

23 A Yes, yeah.

24 Q Can you show me in this document, Exhibit 18 is
25 identified as Animal Waste Management Plan for Jeff 3:25PM

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1 Andrews, right? 3:25PM
2 A Correct.
3 Q And it is dated March 18, 2005?
4 A Uh-huh, yes.
5 Q Can you show me in this, looking -- using Exhibit 3:25PM
6 17 and Exhibit 18, can you show me where you found this
7 3.1 tons per acre and the No. 5, 2.5 tons per acre?
8 A It would be here.
9 Q And "here" you're referring to a page?
10 A Three. 3:25PM
11 Q Page 3 of this document?
12 A Correct.
13 Q Exhibit 18. And you're looking at a table?
14 A Correct.
15 Q And you're telling me that this is where you 3:25PM
16 identified how many tons of litter?
17 A 3.1.
18 Q Now, this indicates Field Number 5 is 3.1?
19 A Also.
20 Q Do you know where you got the 2.5? 3:25PM
21 A I don't know.
22 Q So when you go to inspect one of these poultry
23 grower's operations, can you walk me through the
24 process, what exactly you do? You walk in and what do
25 you ask them for? 3:26PM

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1 A They have a record book that they supply for me. 3:26PM
2 In their record book it has all their information that
3 I'm looking for. They have a registration card that
4 has this information on it from our division, has the
5 number of houses, total capacity. Then I have to look 3:26PM
6 at their soil test, litter test. This, you know,
7 usually stays the same unless -- the second part is
8 where it was applied, so sometimes I don't know where
9 it was -- you know, I don't know the watershed that it
10 was sent to so I just put not available. The Animal 3:26PM
11 Waste Management Plan information stays the same unless
12 it gets updated.

13 Q Okay.

14 A I mean, it's just -- they have a record book that
15 they keep track of everything in. 3:26PM

16 Q So they keep their soil test and their litter test
17 in there then they also keep their registration from
18 ODAFF?

19 A Yeah.

20 Q And their Animal Waste Management Plan? 3:27PM

21 A Right and their education certificates.

22 Q Okay. And that is the information you review when
23 you fill out this inspection checklist?

24 A Correct.

25 Q Is there anything else that you do, that you 3:27PM

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1 inspect the farm or is there anything else, such as 3:27PM
2 that that you might do?

3 A Yeah, I have to do a site, you know, where I'm --
4 you know, if I -- if they've got a composter, you look
5 at their composter. You know, some of them incinerate 3:27PM
6 their birds, their daily death loss. And then other
7 than that, you look at the barns but usually the barns
8 are right there and you just tell if there's stacked
9 litter outside. There isn't a whole lot to it, other
10 than they can't have litter outside and a dead bird 3:27PM
11 rolling out of the composter.

12 Q And they don't know when you're actually going to
13 come to their property to make an inspection, do they?

14 A No, it's unannounced.

15 Q I'm sorry, I assume you're looking for where you 3:27PM
16 got that number so I'm going to let you do that?

17 A I am. I am. That's bewildered me. I know his
18 plan -- I know we've had some problems in the past so
19 I'm just trying to figure out where I did come up with
20 that. 3:28PM

21 Q Well, when you say "problems", what do you mean by
22 that?

23 A Just getting the correct, like his legal
24 description. I don't know if it's -- if this is
25 correct or not, but one of these shows an Arkansas 3:28PM

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1 legal, like numbers has been misprinted -- 3:28PM

2 Q Okay.

3 A -- on it.

4 Q But nothing that he's done personally --

5 A Oh, no. 3:28PM

6 Q -- in his operations, correct?

7 A No, he's a good grower.

8 Q Okay.

9 A But I just didn't dream that number up. I don't
10 know where I come up with it. 3:28PM

11 Q Did he have an Animal Waste Management Plan in
12 place before this March 18, 2005, date?

13 A You know, I don't quite remember if we did or not
14 because he -- because they were all at one time one big
15 operation and then they split up. 3:28PM

16 Q Okay. Well, let's -- I'm sure the court reporter
17 will gladly let you look at that in a little while if
18 you want to and try to find where you got that number.

19 A I'm sorry.

20 Q But let me ask you that. Have you had -- have you 3:28PM
21 had other growers besides Anita Andrews and Jeff
22 Andrews that you've been the poultry inspector that are
23 contracting to grow birds with Peterson Farms in the
24 past?

25 A Have I had other poultry growers? 3:29PM

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1 Q Yes. 3:29PM

2 A I think so.

3 Q Okay. To your knowledge, have you had any
4 problems with any poultry grower who contracts with
5 Peterson Farms in their operations? 3:29PM

6 A Not that I'm aware of right now.

7 Q Let me go ahead and have you -- let's go back and
8 look at this Animal Waste Management Plan for one
9 second. There's a couple more questions I want to ask
10 you real quick about that. We've already talked about 3:29PM
11 what the typical application rate according to this
12 Animal Waster Management Plan is for Jeff Andrews'
13 fields five, six and seven.

14 A Right.

15 Q Do you know what -- does this Animal Waste 3:30PM
16 Management Plan indicate what the total estimated
17 litter production for Mr. Andrews' facility is?

18 A It's on the front page.

19 Q Is it under description of operation?

20 A Right. 3:30PM

21 Q Can you tell me what that number is?

22 A 600 tons.

23 Q Okay.

24 A Estimated.

25 Q Estimated 600 tons per year. And then the plan 3:30PM

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1 also states that based upon the accessible land 3:30PM
2 application acreage, that there is 680 acres of
3 accessible land application on this farm?

4 A Uh-huh.

5 Q And 200 acres are within tolerance of application, 3:30PM
6 correct?

7 A Correct.

8 Q And that totals to be, based on his plan, 620 tons
9 of poultry litter that can be applied to the accessible
10 -- to the acres that are within tolerance of 3:30PM
11 application, correct?

12 A Yes.

13 Q So he's producing, according to this Animal Waste
14 Management Plan, he could apply all of his poultry
15 litter onto his acreage that's -- 3:30PM

16 A According to what the plan says, yes.

17 Q According to the plan, correct?

18 A Yes.

19 Q And be within -- operating within the laws of the
20 State of Oklahoma? 3:31PM

21 A Yes, ma'am.

22 Q Okay. I mean, at the end of the day, this plan is
23 really all the grower has to rely upon to insure that
24 he's following the laws of Oklahoma in applying poultry
25 litter to his property, correct? 3:31PM

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1 MS. WEAVER: Object to form. 3:31PM

2 A I don't know that it's all that he has but it's
3 part as far as his management of his poultry litter.

4 Q What else should he be looking at to insure his
5 compliance with the laws of the State of Oklahoma? 3:31PM

6 A They have to have a current soil test and a
7 current litter test and they're current education, so,
8 I mean, and that's not going to be -- like the
9 education is not going to be in the Animal Waste
10 Management Plan. The soil test that is -- the copies 3:31PM
11 of them are in here somewhere and they're -- I mean,
12 this was done in '05 so this is '07 so the soil and
13 litter tests are two years old and he has to have one
14 every year, but his plan is good for six years so as
15 long as he's following what this is, he's in compliance 3:32PM
16 with his land application.

17 Q Right.

18 A But total law, I mean, there's like education,
19 it's not in here.

20 Q That is related to his poultry growing operation, 3:32PM
21 not necessarily just poultry litter application
22 necessarily in and of itself, correct? Meaning that
23 the educational requirements go to not just poultry
24 litter application but also to his growing of birds,
25 correct? 3:32PM

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1 A Right, right. 3:32PM

2 Q Okay. Let's talk about dead bird disposal for a
3 minute.

4 A Uh-huh.

5 Q Based upon your understanding of Oklahoma law, 3:32PM
6 what are the legal acceptable means of disposing of
7 normal daily mortality of poultry?

8 A You can compost, incinerate, render, and that's
9 about, legal about it, I think.

10 Q Okay. So composting and incinerating are done on 3:33PM
11 the property?

12 A On site, yeah.

13 Q And then the rendering is a third party picks it
14 up?

15 A If available, yes. 3:33PM

16 Q What is a grower supposed to do in the event --
17 under Oklahoma law in the event of a catastrophic loss?

18 A They're to contact the Department of Ag and notify
19 them of their loss and then there was a -- you know,
20 you fill out how many, when, if you can -- at the time 3:33PM
21 it happens, you know, they may not know exact numbers
22 of how and then it's supposed to designate in their
23 plan or it's supposed to designate in their plan what
24 soil or location on their place is suitable for a
25 burial to bury them. 3:33PM

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1 Q Okay. What if one of the growers that you're the 3:33PM
2 poultry inspector for contacts you about a catastrophic
3 loss, what do you direct them to do?

4 A If somebody calls me with a catastrophic loss?

5 Q Yes. 3:34PM

6 A We have to notify Dan at the office and let him
7 know. And a lot of growers do call me when they have a
8 loss because they, I'm their kind of go between.

9 Q So you contact Dan or do they?

10 A They have to. 3:34PM

11 Q They have to. Does Dan then contact you and have
12 you assist them in any way in the disposal of those
13 birds?

14 A I don't assist them on it. All I do is if I have
15 to, if I have to go out and help pick a suitable site 3:34PM
16 that's -- you know, then it becomes like 300 foot from
17 waters of the State in trying to find a suitable site
18 to bury the dead birds.

19 Q So you have on occasion been directed by Dan
20 Parrish to assist a grower in identifying a proper 3:34PM
21 burial area on their property?

22 A Correct.

23 Q When you do that, do you look at their Animal
24 Waste Management Plan?

25 A It's the first thing I look at. 3:34PM

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1 Q What's the next thing? 3:34PM

2 A Well, it's about all I got to look at them. And
3 then I go look at the field, you know, try to find a
4 place that will work.

5 Q So you look at their Animal Waste Management Plan 3:35PM
6 and based on your personal observations you will try to
7 help them?

8 A Yes.

9 Q Find an area, a suitable place for their burial --

10 A Correct. 3:35PM

11 Q -- of the carcasses? Okay. To your knowledge,
12 has any poultry grower who's contracted with Peterson
13 Farms, during the time you've been a poultry inspector,
14 done anything on their property to cause contamination
15 of the waters of the State of Oklahoma? 3:35PM

16 A Not that I'm aware of.

17 Q You spoke with Mr. Graves quite a bit about
18 complaints and when a complaint is filed and you
19 indicated that sometimes you have to follow up, is that
20 accurate? 3:36PM

21 A Uh-huh, yes.

22 Q Would you agree that it's in the poultry grower's
23 best interest to comply and follow with the law?

24 A Yes.

25 Q Because if they don't, they can get their license 3:36PM

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1 taken away from them as part of their failure to 3:36PM
2 comply, wouldn't they?

3 A I would think there's numerous things that would
4 happen or could happen.

5 Q And those things that could happen, the price of 3:36PM
6 the violation could cause that grower to go out of
7 business, couldn't it?

8 A I don't know.

9 Q Well, could the loss of registration cause the
10 grower to go out of business? 3:36PM

11 A Well, I guess if they don't have a registration
12 they can't have birds, so if they owe money on their
13 place, I suppose it would hurt them.

14 Q Okay. And I assume in investigating complaints
15 there are a number of complaints that involve 3:36PM
16 non-poultry people, too?

17 A Right, correct.

18 Q Okay. In fact, I'm going to provide you what I'm
19 going to mark as Exhibit 19 to your deposition.

20 MS. LONGWELL: You know what, let's let 3:37PM
21 him change the tape and then we'll get started on a
22 new tape.

23 THE VIDEOGRAPHER: We are now off the
24 record. The time is 3:37 p.m.

25 (Following a short recess at 3:37 p.m., 3:37PM

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1 proceedings continued on the record at 3:41 p.m.) 3:37PM

2 THE VIDEOGRAPHER: We are back on the
3 record. The time is 3:41 p.m.

4 Q Mr. Berry, before we took the brief break, I
5 provided you Exhibit 9 (sic). 3:41PM

6 A Nineteen, you did.

7 Q I mean 19, sorry. Thank you. On the first page
8 is a file folder labeled -- appears to be a copy of a
9 file folder labeled that says WQC-04-238?

10 A Correct. 3:41PM

11 Q I will represent to you that this is a compliant
12 filed that the defendants obtained from the Department
13 of Agriculture. The first number, is that the file
14 number at ODAFF do you know?

15 A The complaint number, WQC-04-238 is the number 3:42PM
16 that complaint gets assigned.

17 Q What does the WQC stand for, do you know?

18 A It was water quality something.

19 Q So quality complaint do you think?

20 A Probably, yeah. 3:42PM

21 Q But this has been designated as a complaint
22 associated with water quality?

23 A Yeah, 2004, basically the year 2004.

24 Q And then the 238 is the file?

25 A The number. 3:42PM

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1 Q The complaint number? 3:42PM

2 A Uh-huh.

3 Q What's the first -- the first name identified is

4 Gary Aarons, is that correct?

5 A Yes. 3:42PM

6 Q And who is that individual?

7 A That would have been who apparently complained.

8 Q Okay. And then who is -- the next individual

9 listed is Williams, Perry?

10 A Perry Williams. 3:42PM

11 Q Okay. And who is that?

12 A That's who got complained against.

13 Q What is A & W Ready-mix?

14 A That's a company he owned.

15 Q Okay. Did you conduct this investigation? 3:42PM

16 A Yes, I did.

17 Q What was the complaint?

18 A That they had a couple of dead cows, dumping dead

19 cows on a hollow, it says, or gully.

20 Q Okay. And could you in your own words describe 3:43PM

21 for me what a hollow or a gully is?

22 A It's just a like hollow spot in the ground but

23 away, like a ditch, a real deep ditch, real big deep.

24 Q Okay. Does water typically run through a hollow

25 or a gully? 3:43PM

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1 A It can. 3:43PM

2 Q In this instance, where was this -- where was the
3 property where this alleged complaint occurred?

4 A Where was the property?

5 Q Uh-huh. 3:43PM

6 A Over by Siloam Springs.

7 Q Do you know whether or not it was located in the
8 Illinois River watershed?

9 A I guess it would be, yes. It would be in that
10 part of the country. 3:44PM

11 Q And it's in Adair County, correct?

12 A It would have been in Delaware County.

13 Q Okay.

14 A No, that's where his land is at. That's the
15 county road. So it was probably in the northern part 3:44PM
16 of Adair County.

17 Q I'm looking at the fourth page of this document
18 set that I gave to you.

19 A Okay.

20 Q It's where I based my question on and it indicates 3:44PM
21 that the county was Adair?

22 A Adair, okay.

23 Q Is that accurate then?

24 A It probably is.

25 Q Okay. So there was a complaint that he had dumped 3:44PM

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1 dead cattle in a hollow or a gully, correct? 3:44PM

2 A Yes, ma'am.

3 Q What did you find in your investigation?

4 A I think I found two dead cows.

5 Q Okay. Do you know whether this gully or hollow 3:44PM
6 was a part of a waterway like a stream or a creek?

7 A Not that I remember.

8 Q Did it appear at all to your recollection whether
9 or not water had ever run through that gully or hollow?

10 A Yes, it can. 3:45PM

11 Q Okay. What did you -- did you take any
12 photographs of what you saw?

13 A (Witness shakes head.)

14 Q What did you do after you learned that there were,
15 in fact, two carcasses of cattle in that hollow or 3:45PM
16 gully?

17 A I just had to get Mr. Williams to get them out and
18 take care of them.

19 Q And what did you direct him to do?

20 A To bury them. 3:45PM

21 Q And where did you have him bury them?

22 A Up out of the gully.

23 Q But on his property?

24 A Uh-huh.

25 Q Okay. Did you talk to Dan Parrish about what you 3:45PM

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1 found when you did your inspection before you directed 3:45PM
2 Mr. Williams to bury the cows?

3 A You know, I don't remember if I would have talked
4 to Dan on that or not. I was kind of a young inspector
5 there and I might have -- and I might not have, I don't 3:45PM
6 know.

7 Q Is this one of those instances where you were
8 called in to do an inspection because the inspector who
9 was handling CAFOs and livestock wasn't available?

10 A That's a good question because I don't normally do 3:46PM
11 cattle unless something is wrong with the cattle
12 inspector.

13 Q Is there anything in this investigation file that
14 you've seen that would identify that?

15 A Huh-uh. 3:46PM

16 Q Okay. Based on what you saw, had you determined
17 whether or not this had happened before?

18 A Whether he had had dead cows before?

19 Q In that hollow or gully?

20 A I don't believe I observed any other than the two 3:46PM
21 that I seen.

22 Q Did you ask him about whether or not he had ever
23 left cattle in that area?

24 A I don't know what all I asked him.

25 Q Do you keep notes outside of the investigation 3:46PM

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1 report that you filed here about your communication 3:46PM
2 with Mr. Williams?

3 A No, I write on my inspection or my complaint form.
4 I write on the back of it and transfer it over to my
5 report. 3:46PM

6 Q What do you do with that -- with your notes on the
7 back of that complaint form?

8 A I just -- I trash everything after I've sent it
9 off.

10 Q Okay. Now, after you directed Mr. Williams to 3:47PM
11 bury the two cows, did you go do a follow up?

12 A Yes, I did.

13 Q And what did you find when you did your follow up?

14 A That he had removed the cows and buried them.

15 Q Do you know if Mr. Williams was fined by ODAQ for 3:47PM
16 leaving those two cows in this gully?

17 A I'm not real sure if he was or not.

18 Q Are you informed when ODAFF determines it's going
19 to fine someone for activities that might be in
20 violation of the statutes or the regulations? 3:47PM

21 A You know, I don't know that I -- you know, I don't
22 know that I am notified by, you know, just that this is
23 what we're going to do, other than I may get a copy
24 that it happened or, I mean, I don't know.

25 Q Have you ever investigated -- prior to this date, 3:47PM

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1 have you ever investigated any complaints against 3:48PM
2 Mr. Williams?

3 A Not that I can remember.

4 Q Subsequent to this complaint in '04, have you
5 investigated any complaints against Mr. Williams? 3:48PM

6 A It seems like I have because I think he had to go
7 get a poultry spreader license for some reason.

8 Q Okay. Were you -- do you recall any of the
9 details of that complaint?

10 A Oh, I don't know that it -- I don't remember when 3:48PM
11 I seen this. That's why I seen his name, it just --
12 I'm thinking he's got an applicator license to spread
13 litter and it's a complaint about two dead cows so I'm
14 trying to figure out which one of them.

15 Q But you know there was a complaint associated with 3:48PM
16 his spreading of poultry litter, correct?

17 A I think so, if I recall, yeah.

18 Q Is Mr. Williams a poultry grower to your
19 knowledge?

20 A No, I think he was just a gentleman using litter. 3:48PM

21 Q Okay. Have you ever observed where a poultry
22 grower had litter stacked outside uncovered?

23 A Yeah.

24 Q And what have you done when you've seen that?

25 A They get the owner or the operator to cover it. 3:49PM

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1 Q Okay. Do you ever -- have you ever directed the 3:49PM
2 poultry grower to apply the litter to their property?

3 A If that's what they're going to do, they need to,
4 you know, get it spread, yeah.

5 Q And when you direct them to do that, do you go 3:49PM
6 through the process of looking at their Animal Waste
7 Management Plan or their soil test or litter test?

8 A I don't look at it. I mean, as they've got a
9 current soil test, litter test and it's below the
10 phosphorous index that they can spread, they can 3:49PM
11 spread. I don't look at it.

12 Q But you don't look at it --

13 A Right, not right --

14 Q -- to verify whether or not they really can do it
15 at that time? 3:49PM

16 A Not if he's a poultry grower. Now, if it's a
17 complaint, I may double check to make sure on my
18 paperwork but if it's just -- if I took it as a random
19 I seen some litter, no.

20 Q Okay. You stated earlier that -- do you know 3:50PM
21 whether or not there are any Oklahoma regulations or
22 statutes that govern the use of commercial fertilizer?

23 A Not that I'm aware of.

24 Q So one -- a person could actually over apply
25 phosphorous containing -- a phosphorous containing 3:50PM

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1 commercial fertilizer and there's nothing that you 3:50PM
2 could do about it as the poultry inspector, correct?

3 A I don't know anything about commercial fertilizer.

4 Q Have you ever -- on occasion, have you ever done
5 any -- I think maybe this was asked before and if it 3:50PM
6 was, I apologize but have you in investigating a
7 complaint ever taken any water samples?

8 A Just one time.

9 Q And that was the well, correct?

10 A Yes, ma'am. 3:50PM

11 Q Okay. I gather you spend a lot of time in your
12 vehicle on the Illinois River watershed, is that
13 correct?

14 A I spend time in my vehicle all over my territory.

15 Q How many miles would you say you put on your 3:51PM
16 vehicle in a month?

17 A Probably -- I don't know, I average probably 100
18 miles a day.

19 Q Would you say you have a pretty good sense of
20 what's going on in the watersheds in your area? 3:51PM

21 A What do you mean?

22 Q The activities, the agricultural activities, the
23 daily activities of people, that you say you kind of --

24 A A guy is cutting hay and stuff like that?

25 Q Yes. 3:51PM

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1 A Yeah, I see some of that. 3:51PM

2 Q And you're probably pretty observant since you're
3 an inspector, wouldn't you say?

4 A I'm observant because I'm a country boy and I like
5 stuff like that. 3:51PM

6 Q So I would bet you would know when things change,
7 too?

8 A To some extent.

9 Q Okay. So have you noticed whether or not there is
10 an erosion problem in the stream banks along the 3:52PM
11 waterways in the area, in your inspection areas?

12 A I haven't noticed anything different that would
13 alarm me. I mean, that appeared different to me.

14 Q Okay. And when you go out to people's properties,
15 have you -- well, just strike that. Would you -- do 3:52PM
16 you, sorry. If a person who spends a significant
17 amount of time in the watershed and who is observant,
18 what other things besides the allegations in this
19 lawsuit about poultry have you seen in the watershed
20 that has personally concerned you might be causing harm 3:52PM
21 to the Illinois watershed?

22 MS. WEAVER: Object to form.

23 A Nothing. I don't -- nothing.

24 Q And you indicated earlier that the only
25 information you've maintained or you've kept are your 3:53PM

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1 copies of the inspection checklist, is that accurate? 3:53PM

2 A That three-page inspection.

3 Q And not --

4 A I've the three -- not the three-page inspection,
5 the three-page registration and then a copy of their 3:53PM
6 inspection sheet.

7 Q And you don't keep any of your notes with regard
8 to --

9 A No.

10 Q -- complaints? 3:53PM

11 A No, no. I've never felt no need in it.

12 Q No steno pad?

13 A If I had known I was going to be here today, I
14 might have kept a lot of notes, but I've always just
15 threw everything away. Once I get it wrote and sent to 3:53PM
16 Dan, I mean, it's in the office and I know they're
17 keeping a copy or probably, so.

18 Q And to date, no one has directed you from ODAFF or
19 any of the attorneys that are representing the State in
20 this case have directed you not to throw away any of 3:53PM
21 your notes on complaints or on poultry growing
22 operations?

23 A No.

24 Q Okay. And no one has directed you not to delete
25 any e-mails you might receive from Dan Parrish or 3:54PM

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1 anyone else from ODAFF? 3:54PM

2 A I've never got an e-mail from Dan.

3 Q Or no one has directed you to not delete any
4 e-mails that you might send to Dan or --

5 A No. 3:54PM

6 Q -- to any other individual in ODAFF?

7 A No.

8 Q Okay. Have you ever inspected a nursery in the
9 Illinois River watershed?

10 A Like a -- 3:54PM

11 Q Plant nursery?

12 A No, ma'am.

13 MS. LONGWELL: This is where it gets real
14 sporadic because I'm just bouncing back and forth.

15 Why don't I do this, I'll reserve any last questions 3:55PM
16 I have for the very end and let the other attorneys
17 in the room ask their questions.

18 MS. HILL: I've got a few. Do you have an
19 exhibit sticker?

20 CROSS EXAMINATION 3:55PM

21 BY MS. HILL:

22 Q Mr. Berry, my name is Theresa Hill. I represent
23 Cargill in this litigation.

24 A Yes, ma'am.

25 Q And just to follow up on Nicole's questions 3:55PM

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1 concerning records? 3:55PM

2 A Yes, ma'am.

3 Q You referred to a map earlier that you used to use
4 that had the smaller watershed numbers?

5 A Mm-hmm. 3:55PM

6 Q Do you still have that map?

7 A I'm sure I do.

8 Q Okay. And that would be in your files at home?

9 A It would be in my briefcase.

10 Q Okay. Do you have any other maps that you refer 3:55PM
11 to?

12 A My watershed maps that help me locate my
13 facilities since we GPS'd the facility entranceways,
14 they was able to give me a map that I can look at to
15 determine where the facility is at in what watershed. 3:56PM

16 Q So the maps that you have now have the GPS
17 readings of the facilities that you inspect?

18 A Yes.

19 Q And you keep those in your briefcase?

20 A Yes. 3:56PM

21 Q What else do you keep in your briefcase relating
22 to your poultry inspection operations?

23 A Just my record book, you know, my inspection book
24 that I have to work, you know, that I fill out and then
25 my maps. 3:56PM

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1 Q And what's the inspection book that you have? 3:56PM

2 A Well, it's the three-page inspection, annual
3 inspections I do. It's that book.

4 Q What exhibit number are we on?

5 MS. LONGWELL: Twenty. 3:56PM

6 Q This is 20. Mr. Berry, do you know a poultry
7 grower named Bob Schwabe?

8 A Yes, ma'am.

9 Q And can you identify Exhibit 20 that I'm handing
10 to you here, what this is? 3:57PM

11 A It's my inspection from December 18th of 2002.

12 Q Okay. And this is an inspection checklist that
13 you filled out for Mr. Schwabe?

14 A Yes, ma'am.

15 Q And Mr. Schwabe grows turkeys for Cargill, is that 3:57PM
16 correct?

17 A Yes, he does.

18 Q And on Page 2 and 3 of this exhibit, are those
19 records that you filled out or are those things you
20 obtained from Mr. Schwabe? 3:57PM

21 A These are the records that -- because he was -- he
22 was spreading so much litter that the space they gave
23 me on my inspection sheet wouldn't allow me the write
24 it all down so I used a piece of paper to write it on
25 and attached it. 3:57PM

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1 Q So this is your writing that you've taken from his 3:57PM
2 records?

3 A Yes, it is.

4 Q And looking at that last page, you indicate that
5 his records are in excellent shape. Do you recall 3:58PM
6 looking through his records?

7 A Well, that's the records. That's what I'm, you
8 know, he kept track of his soil test, litter test and
9 when he was spreading it. This has changed. I mean,
10 this is an old -- now, these guys I don't write down 3:58PM
11 when they spread because they have to turn in it on
12 another report themselves so it says different but,
13 yeah, his records are always in good shape.

14 Q He has a lot of records, doesn't he?

15 A Yes, he does. 3:58PM

16 Q He keeps great records. Have you had any problems
17 with Bob Schwabe as far as a grower or your
18 inspections?

19 A No, he's been a gentleman.

20 Q Have you had any conversations with Mr. Schwabe 3:58PM
21 about this lawsuit?

22 A Mr. Schwabe was one of my gentlemen on the list to
23 soil sample.

24 Q Uh-huh.

25 A Actually he was the first one we went to to have a 3:58PM

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1 soil sample. 3:59PM

2 Q And he -- and what happened when you first went to
3 him to have the soil sampling?

4 A Well, it was just like I said earlier, I mean,
5 they don't understand why -- you know, why, what, how. 3:59PM

6 I mean, they just didn't understand the whole protocol
7 of it so and he just, if I recall right, he just, like
8 all the rest, wanted to be -- time to think about it or
9 consult somebody else or whatever, but we wasn't going
10 to get it done that day. 3:59PM

11 Q Was he a gentleman to you then about that, that
12 issue?

13 A He was a gentleman. He was -- yeah, he was.

14 Q Okay.

15 A He handled it just, you know, just fine. 3:59PM

16 Q Did Mr. Schwabe attend the May '05 meeting?

17 A I can't remember Bob being there but knowing Bob,
18 I'm assuming he was.

19 Q All right. So were you involved in any -- have
20 you been involved in any soil sampling on Mr. Schwabe's 4:00PM
21 land?

22 A I've never soil sampled Mr. Schwabe's farm.

23 Q And as far as your work in inspecting
24 Mr. Schwabe's farm, has he always been in compliance
25 with the Act as far as you know? 4:00PM

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1 A Yeah. I mean, I can't recall every inspection 4:00PM
2 but, you know, the best of my knowledge he's one of my
3 growers that's always on top of things. You know, he's
4 never -- I think here I'm looking here where his plan
5 needed to be revised would have been the only thing. 4:00PM
6 And that's not his fault, you know. I mean, it's just
7 something that needed to be done.

8 Q Are you familiar with any other growers who you
9 inspect their operations who contract with Cargill?

10 A I've got some turkey rowers but I can't recall 4:01PM
11 their companies for sure.

12 Q How about Ernest Doyle? Are you an inspector for
13 Mr. Doyle?

14 A Yeah, yeah, Westville.

15 Q Do you have any concerns with Mr. Doyle's 4:01PM
16 operations or his recordkeeping?

17 A No. Mr. Doyle lost his daughter in a car accident
18 a couple years ago and at that time he was able to
19 provide the records I needed but he was pretty,
20 pretty -- not late, but I had to work around his 4:01PM
21 schedule.

22 Q You worked with him through that?

23 A Yes.

24 Q A difficult time?

25 A Yes. 4:01PM

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1 Q Which is still a difficult time for him? 4:01PM

2 A Yes, yes.

3 Q But even in that very difficult time he got you
4 what you needed?

5 A Yes, yes. 4:02PM

6 Q What about Clyde Masters, are you an inspector for
7 Mr. Masters?

8 A Yeah, yeah, Mr. Masters.

9 Q As far as you recall, do you have any problems or
10 concerns about Mr. Master's poultry operations or 4:02PM
11 recordkeeping?

12 A No. Mr. Masters has kept his records. He sells
13 his litter and so all he has to do is litter test.
14 He's always had that for me. Education. I've never --
15 I don't think he's ever been out of compliance on 4:02PM
16 education, no.

17 Q I'll tell you I can't find records that you
18 inspected any other Cargill growers, can you recall any
19 sitting here today?

20 A Oh, I mean, unless you tell me, you know, I 4:02PM
21 apologize, but I have turkey farms but I don't know
22 whose -- I mean, at the day I can tell you, but off the
23 top of my head I couldn't tell you.

24 Q Off the top of your head, can you recall any other
25 turkey operators, turkey farms? 4:03PM

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1 A I have a Larry Emerson. 4:03PM

2 Q Do you know who he contracts with?

3 A No. He grows turkeys.

4 Q Where is he located?

5 A Tahlequah. 4:03PM

6 Q Is he in the Illinois River watershed?

7 A Yeah, he would be Tenkiller.

8 Q Have you had any problems or concerns with any of
9 your turkey growers?

10 A Not that I can recall, I mean -- 4:03PM

11 Q So as far as you can recall sitting here today and
12 the records we looked at for Mr. Schwabe, the turkey
13 growers that you inspect have been in compliance with
14 the Act?

15 A To the best of my knowledge, yes, ma'am. 4:03PM

16 MS. HILL: All right. That's all the
17 questions I have for you. Thank you.

18 THE WITNESS: Thank you, ma'am.

19 CROSS EXAMINATION

20 BY MR. ELROD: 4:04PM

21 Q Mr. Berry, my name is John Elrod. I represent
22 Simmons Foods in Siloam Springs. Thank you for being
23 with us today.

24 A Thank you, sir.

25 Q Are you having fun? 4:04PM

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1 A Absolutely. 4:04PM

2 Q Can you give me an indication of how many Simmons
3 growers that you inspect?

4 A I don't know the exact number, sir. I have
5 several I think, though. 4:04PM

6 Q Out of the 110 or so that you have, can you give
7 me kind of within a ballpark? I don't know whether
8 it's five or 25.

9 A Maybe 20 --

10 Q Okay. 4:04PM

11 A -- percent.

12 Q Do you have any problems with any of those
13 growers?

14 A Not off the top of my head as of today, I don't.

15 Q Already. Just speaking generally, how many years 4:05PM
16 have you been an inspector?

17 A I started with the Department of Ag in 2000, but I
18 don't remember the exact time frame of my -- it was
19 maybe -- well, it had to have been in 2002 because
20 that's right here, so it's probably right around 2002. 4:05PM

21 Q You've been in the field five, six years,
22 something like that?

23 A Yeah, yes, sir.

24 Q And generally speaking, are there any growers out
25 there who, in your view, are bad actors? 4:05PM

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1 A No. 4:05PM

2 Q You think there's a general compliance with the
3 laws of the State of Oklahoma?

4 MS. WEAVER: Object to form.

5 A I feel like my growers try to understand and try. 4:05PM
6 Now, what they do behind my back I don't know, but I
7 think they do try.

8 Q Based on your observations and your five plus
9 years in the field, do you think there's any -- do you
10 think there's any substantial cheating going on out 4:06PM
11 there?

12 MS. WEAVER: Object to form.

13 A I don't think so. I think they've got too much to
14 lose to cheat.

15 Q Yes, sir. And do you believe that any of these 4:06PM
16 growers have a malicious intent to harm the waters of
17 the State of Oklahoma?

18 A Not that I'm aware.

19 Q I apologize. I kind of got lost this morning. I
20 wasn't here for the first 20 minutes of your 4:06PM
21 deposition.

22 A I've been lost all day, sir.

23 Q I missed some of the background. I now know that
24 you're a bull rider?

25 A Yes, sir. 4:06PM

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1	Q	But you grew up on a farm?	4:06PM
2	A	Yes, I did.	
3	Q	Near Locust Grove?	
4	A	Yes.	
5	Q	South of 412?	4:06PM
6	A	Yes, sir.	
7	Q	Okay. How many acres?	
8	A	200.	
9	Q	And principally cattle?	
10	A	Mostly cattle.	4:07PM
11	Q	And as I understand it from your testimony, your	
12		father has used chicken litter?	
13	A	Yes, sir.	
14	Q	And your sister has been a chicken producer?	
15	A	Yes, sir.	4:07PM
16	Q	Based on your work in the last five years, your	
17		knowledge of the chicken grower community in	
18		northeastern Oklahoma and your personal observations	
19		from having grown up on a cattle farm, do you believe	
20		that, first of all, growers consider chicken litter to	4:07PM
21		be a valuable asset?	
22	A	Yes.	
23	Q	You have to say a word.	
24	A	Yes.	
25	Q	And do you believe that cattle growers consider	4:07PM

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1 chicken litter to be a valuable asset? 4:07PM

2 A It's a fertilizer for their hay fields.

3 Q And I think I heard your testimony this morning
4 that your parents didn't use commercial fertilizer?

5 A No, sir, we never have. 4:08PM

6 Q And do you see -- strike that. Just from having
7 lived on the earth, you know that most commercial
8 fertilizer comes from a petroleum based beginning,
9 either that or mining?

10 A I'm not real educated on it, but yeah. 4:08PM

11 Q All right. And you're aware that the price, cost
12 of commercial fertilizer has skyrocketed in the last
13 three years?

14 A Yes, sir.

15 Q And in your view, does the cost of commercial 4:08PM
16 fertilizer make chicken litter even more of a valuable
17 asset?

18 MS. WEAVER: Object to form.

19 A I've been told that.

20 Q All right, sir. And I think I've heard your 4:08PM
21 testimony that your growers have been cooperative with
22 you, is that true, sir?

23 A Yes, sir.

24 Q Have they have been courteous to you?

25 A Yes, sir. 4:08PM

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1 Q And would you agree with me that the thrust of the 4:08PM
2 litter management laws and regulations of the State of
3 Oklahoma is toward the grower not towards the company?

4 MS. WEAVER: Object to form.

5 A Could you repeat that? I sorry. 4:09PM

6 Q Would you agree with me that the State of Oklahoma
7 has chosen to regulate litter management in Oklahoma by
8 passing laws that are directed at activities of the
9 grower, not at the activities of the companies?

10 MS. WEAVER: Same objection. 4:09PM

11 A It may not be the answer, but I think it's
12 directed to anybody that land applies in Oklahoma.

13 Q And those would either be growers or applicators
14 with cattle, not Simmons Foods, is that true?

15 A Correct. 4:09PM

16 Q And will you agree with me that it's the grower,
17 based on your observations and your knowledge of the
18 industry, that it's the grower who owns the chicken
19 litter and not the company?

20 MS. WEAVER: Object to form. 4:09PM

21 A That's something I don't know.

22 Q Okay. In all your five plus years of being a
23 poultry field inspector, have you ever dealt with
24 inspections or enforcement issues directly with Simmons
25 Foods as opposed to those who contract with Simmons 4:10PM

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1 Foods as growers? 4:10PM

2 A That I've had to actually deal with the company
3 Simmons?

4 Q Yes, sir.

5 A Not that I can recall. 4:10PM

6 Q Based on your observations in five years plus
7 working in the field, have you heard of any health
8 concerns expressed by the Oklahoma Department of Health
9 or any of its agents regarding being around chicken
10 litter, chicken litter and water, any of those issues? 4:11PM

11 A I'm not aware of any concerns, sir.

12 Q I believe I heard your testimony to be that your
13 understanding was the 2005 warrants and the attempts to
14 conduct the soil sampling with Camp, Dresser and McKee
15 were related to this lawsuit, is that true? 4:11PM

16 MS. WEAVER: CDM.

17 Q CDM were related to this lawsuit?

18 A Yeah, yeah.

19 Q And if an assistant attorney general made
20 representations as an officer of the court to the state 4:11PM
21 court judge in Oklahoma, that those events had nothing
22 to do with this lawsuit, but rather with simply a
23 regular ordinary exercise of ODAFF's regulatory powers,
24 that would be a lie, wouldn't it?

25 MS. WEAVER: Object to the form. 4:12PM

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1 A Other than -- we can soil sample and the only way 4:12PM
2 I've ever known to soil sample is different than what
3 their protocol was.

4 Q Was the 2005 sampling attempts, correct?

5 A Right, yes, sir. 4:12PM

6 Q And those were related to this lawsuit, weren't
7 they?

8 A Yes, sir.

9 Q How many applicators approximately do you work
10 with in your area? 4:12PM

11 A Several. More, I have -- I believe I probably
12 have more applicators than I do poultry operations.

13 Q Oh, really?

14 A Yes, sir.

15 Q Commercial applicators? 4:13PM

16 A And private.

17 Q Is a private applicator usually a grower, actually
18 a grower?

19 A Normally, but you might find somebody that just
20 wants poultry litter and he's going to spread it 4:13PM
21 himself.

22 Q Okay?

23 A And so he'll just get a license, private.

24 Q Let's talk for a second about those people who I
25 call commercial applicators? 4:13PM

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1 A Okay. 4:13PM

2 Q A guy with a truck or two?

3 A Yes, sir.

4 Q Who actually transports litter from buyer to
5 seller? 4:13PM

6 A Uh-huh.

7 Q How many of those kinds of people are there in
8 your area?

9 A I have several. I don't know an exact number. I
10 haven't looked at that in quite a while but I do 4:13PM
11 have -- I have several applicators.

12 Q And do you think that most of those people are
13 complying with the laws?

14 A Well, as of this morning, I don't have any open
15 compliances on anything. 4:13PM

16 Q I want to ask some questions about this
17 catastrophic loss issue. I don't think we've ever
18 tried to put a number on that. That is not ordinary,
19 is it?

20 A No. A catastrophic death loss, it don't happen a 4:14PM
21 lot. But what we consider a catastrophic loss is
22 something that their daily carcass disposal won't
23 handle, then we call it a catastrophic.

24 Q Would that be -- what would be the smallest number
25 of birds that you would call catastrophic? 4:14PM

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1 A I don't know. It would be more than they could 4:14PM
2 incinerate in a day or more than they can compost.

3 Q But that happens very seldom?

4 A It's very seldom it does. And it's normally
5 because of a power outage or something has happened. 4:14PM

6 Q Okay. To your knowledge, sir, have any
7 independent contractor of Simmons' growers done
8 anything on their property to cause contamination of
9 the waters of the State of Oklahoma?

10 A Not that I'm aware. 4:15PM

11 Q Do you know, who at ODAFF, and I don't mean
12 necessarily the name of a person, but is there somebody
13 at ODAFF who inspects nursery operations? And I'm
14 thinking specifically about that large Greenleaf
15 operation at the top of Lake Tenkiller? 4:15PM

16 A That inspects nurseries?

17 Q Uh-huh.

18 A I wouldn't know who that would be.

19 Q Have you ever heard any discussions within ODAFF
20 of anybody at the Department of Ag who conducts 4:15PM
21 inspections of that Greenleaf Nursery?

22 A No.

23 Q Do you know anything about their discharge?

24 A I don't know anything about it.

25 Q Okay. Thank you, sir. 4:15PM

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1 A Thank you, sir. 4:15PM

2 CROSS EXAMINATION

3 BY MR. BOND:

4 Q Mr. Berry, my name is Michael Bond and I represent
5 Tyson Foods and Cobb-Vantress in this case and I've got 4:16PM
6 just a few questions. I will be kind of all over the
7 place because a lot of people have had the opportunity
8 to ask questions.

9 A I understand.

10 Q First question is: Do you need a break? 4:16PM

11 A I'm fine.

12 Q Okay. When you go out and do one of your
13 inspections, who are you inspecting?

14 A I'm inspecting the facility.

15 Q The facility? 4:16PM

16 A And the operators, the owner operator. There
17 could be an owner and a different operator and the
18 operator is who is in charge of keeping the records for
19 me.

20 Q Okay. How do you know who the operator is? 4:16PM

21 A It's on their three-page application that they
22 fill out to register their operation with Oklahoma.

23 Q Okay. Are any of the operators that you inspect
24 named Tyson Foods?

25 A No, no, sir. 4:17PM

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1 Q Are any of them named Cobb-Vantress? 4:17PM

2 A No, sir.

3 Q And when you're inspecting and looking at the
4 records to see if they're in compliance with what
5 you're looking for, whose records are you looking at? 4:17PM

6 A The owner/operator of the facility.

7 Q Okay. And I assume that of the farms or
8 facilities that you inspect in the Illinois River
9 watershed there are some farms in there that have
10 contracts to grow poultry with Tyson Foods? 4:17PM

11 A Yes.

12 Q And Cobb-Vantress?

13 A Yes.

14 Q Okay. Do you think that the Animal Waste
15 Management Plans that these facilities have been issued 4:18PM
16 in the Illinois River watersheds appropriately
17 regulated conduct associated with land application of
18 poultry litter?

19 MS. WEAVER: Object to form.

20 A Could you say that again? 4:18PM

21 Q Sure. Do you think the Animal Waste Management
22 Plan that these farms in the Illinois River watershed
23 have appropriately regulate planned application of
24 poultry litter?

25 MS. WEAVER: Object to form. 4:18PM

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1 A I think it helps. 4:18PM

2 Q You think it helps. What's the purpose of an
3 Animal Waste Management Plan, if you know?

4 A They're required to get it and the purpose behind
5 it would be if I was -- would be just to tell them what 4:18PM
6 rate they can put their litter down at, you know.

7 Q It tells them what they can do with poultry
8 litter?

9 A Yeah. Tells them the types and soil and where
10 they can apply and where they can't apply. 4:19PM

11 Q And they're required to have one by the State of
12 Oklahoma?

13 A The poultry operations, yes.

14 Q Do you think the State of Oklahoma would require
15 them to have something that didn't do what it's 4:19PM
16 supposed to do?

17 MS. WEAVER: Object to form.

18 A No.

19 Q That wouldn't make any sense, would it?

20 A No, it wouldn't make no sense. 4:19PM

21 Q Do you think that the growers in the Illinois
22 River watershed are trying their best to comply with
23 what is required of them?

24 MS. WEAVER: Object to form.

25 A I think my growers are trying to comply with the 4:19PM

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1 law. 4:19PM

2 Q Okay. Do you know of any growers who have
3 contracts Tyson and/or Cobb that are intentionally
4 trying to violate the law?

5 A Not that I'm aware of. 4:20PM

6 Q Are you aware that growers, in fact, rely on those
7 Animal Waste Management Plans?

8 A That they rely on them?

9 Q Yeah.

10 A Yeah, they need them. 4:20PM

11 Q Do you, as an inspector for the State of Oklahoma
12 and Oklahoma Department of Ag Food and Forestry,
13 provide growers with the actual law?

14 A Not that I'm aware of.

15 Q Have you ever handed out a pamphlet? 4:20PM

16 A I have not.

17 Q What about at these educational courses?

18 A There's nothing handed out there.

19 Q Okay.

20 A I think O.S.U. has a website that you can go to 4:20PM
21 and we do, too, that I guess you can download it, if
22 you want to, you know, do that.

23 Q Do you all tell them about those websites?

24 A O.S.U. does at the classes.

25 Q Okay. So would you agree with me that primarily 4:21PM

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1 they rely on their Animal Waste Management Plan? 4:21PM

2 A And they rely on me, too.

3 Q Okay. Do you feel like there is -- there's got to
4 be some trust involved between you and the growers that
5 you go out and inspect? 4:21PM

6 A Yes, yes, sir.

7 Q And, for example, I noticed earlier when people
8 were going through Animal Waste Management Plans, that
9 if they apply litter, that Animal Waste Management Plan
10 tells them the rate at which they can apply? 4:21PM

11 A Yes.

12 Q The fields on which they can apply, correct?

13 A Uh-huh.

14 Q And then there's also a map on the Animal
15 Management Plan? 4:22PM

16 A Correct, yes, sir.

17 Q And that map oftentimes will have areas within a
18 field where there cannot be land application, correct?

19 A Correct.

20 Q Okay. When you go out and inspect on your annual 4:22PM
21 inspection, do you go through that map with them and
22 ask them whether or not they have applied in any of the
23 areas on a field which they are allowed to apply on but
24 not in those specific checkered off sections?

25 A No. 4:22PM

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1 Q Okay. So you've got to take them at their word -- 4:22PM

2 A Yes.

3 Q -- that they haven't?

4 A Yes.

5 Q With respect to any of the Tyson and Cobb growers 4:22PM
6 that you are assigned to, do you think any of them are
7 not trust worthy?

8 A I mean, I trust them all. They haven't done
9 anything to me to make me believe not otherwise.

10 Q They haven't done anything for you to basically 4:22PM
11 dis-earn your trust?

12 A Right, correct.

13 Q If you find out that a person has misapplied
14 poultry litter, a person who does not have a poultry
15 farm misapplies poultry litter, do you track back where 4:23PM
16 that litter came from and advise the grower of that?

17 A The origination of the litter? No, I don't advise
18 the grower because he's really not the one in trouble,
19 it's the man that misused it.

20 Q The person who had possession of the litter? 4:23PM

21 A Yes, sir.

22 Q That's the person that misused it?

23 A Right, correct.

24 Q So what is your understanding of who owns the
25 litter? 4:24PM

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1 A Well, if a poultry grower sells it and he's 4:24PM
2 getting paid for it, then I suppose it's his litter,
3 whoever's getting the check for it who owned it.

4 Q Okay. And then whoever pays for it?

5 A Now it's theirs. 4:24PM

6 Q They own it?

7 A Yes.

8 Q There's a fair amount of trade, if you understand
9 what I mean, in poultry litter in the Illinois
10 watershed, correct? 4:24PM

11 A Correct.

12 Q You're aware that poultry litter is transported
13 out of the watershed, correct?

14 A Yes, sir.

15 Q Okay. Are you aware of who does that? 4:24PM

16 A A little bit.

17 Q Is it some of these commercial applicators?

18 A Yes, sir.

19 Q Okay. And not all poultry litter produced in the
20 Illinois River watershed is applied in the Illinois 4:25PM
21 River watershed, correct?

22 A That's correct.

23 Q In fact, a lot of it is not applied in the
24 Illinois watershed?

25 A I don't know the number of how much is transported 4:25PM

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1 out but I know some is. 4:25PM

2 Q Okay. Do you know some of these commercial litter
3 applicators?

4 A Yes, I do.

5 Q Has there ever been an instance where a grower has 4:25PM
6 wanted to sell or give away litter and not known who to
7 contact that you're aware?

8 A I'm not aware of it.

9 Q Have you ever put a commercial applicator in touch
10 with a poultry grower? 4:25PM

11 A No.

12 Q You don't actually write Animal Waste Management
13 Plans?

14 A No, sir, I don't.

15 Q Do you know where the information that goes into 4:26PM
16 an Animal Waste Management Plan is retrieved from?

17 A Well, the poultry operation has to supply the NRCS
18 with all the information that they need to develop one.

19 Q Okay. Have you ever noted on an inspection or
20 received a complaint that a grower who has a contract 4:26PM
21 with Tyson or Cobb has ever applied poultry litter to
22 run off into the waters of the State of Oklahoma?

23 A No, sir.

24 Q Have you ever noted on an inspection or received a
25 complaint that a grower under contract with Tyson or 4:27PM

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1 Cobb has ever discharged poultry litter into the waters 4:27PM
2 of the State of Oklahoma?

3 A Not that I'm aware of.

4 Q And have you ever noted in an inspection or
5 received a complaint that a grower under contract with 4:27PM
6 Tyson Foods or Cobb-Vantress has ever released poultry
7 litter into the waters of the State of Oklahoma?

8 A Not that I'm aware of.

9 Q And you inspected poultry farms in the Illinois
10 River watershed? 4:27PM

11 A Yes, sir, I do.

12 Q And do you respond to complaints with respect to
13 poultry operations in the Illinois River watershed?

14 A Yes.

15 Q And if you had ever seen or been advised of a 4:27PM
16 runoff, release or discharge of poultry litter into the
17 waters of the State of Oklahoma, you would have done
18 something about it, right?

19 A That's my job, yes, sir.

20 Q Okay. Is Locust Grove in the Illinois watershed? 4:28PM

21 A It's in Fort Gibson.

22 Q It's in Fort Gibson. Do you live in the Illinois
23 watershed now?

24 A No.

25 Q And you never have? 4:28PM

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1 A Never. 4:28PM

2 Q The two former poultry inspectors, is it Brett
3 Sholar?

4 A Sholar.

5 Q And Gary? 4:28PM

6 A Fisher.

7 Q Fisher. Do you know where Brett is now?

8 A I have no idea.

9 Q Okay. Do you know where Gary is now?

10 A I think he's from Tahlequah still. 4:28PM

11 Q Okay. Are there instances in which when you go
12 out to a poultry farm for an inspection and you see
13 something that you think is out of compliance, do you
14 ever just tell them to fix it right then and there?

15 A Yes. Yes, I do. 4:29PM

16 Q Do you also file a report on that instance?

17 A No, I don't.

18 Q So sometimes you do actually make a determination
19 of a violation on the remedial measure, right?

20 A I don't -- I don't know that I would put it that 4:29PM
21 way. If I see somebody that has some litter piled
22 outside, outside of their barn and they're -- and I see
23 it, I will have them cover it because they're supposed
24 to. It's supposed to be covered.

25 Q You know how it's going to work out, I mean, if 4:30PM

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1 you see it? 4:30PM

2 A I know what's going to happen.

3 Q Yeah, you see it and then you go back and you send
4 Dan a report?

5 A Right. 4:30PM

6 Q Dan is going to look at the report and then he's
7 going to send a letter and then, you know, that's going
8 to take time?

9 A Correct.

10 Q So if you see it? 4:30PM

11 A Correct.

12 Q You know it is?

13 A Correct.

14 Q You tell them?

15 A Right. 4:30PM

16 Q You tell them what to do?

17 A Yes, sir.

18 Q The truck you drive around in the watershed?

19 A Uh-huh.

20 Q Is it yours? 4:30PM

21 A Yes, it is.

22 Q Okay. Are you paid mileage and gas on it?

23 A I'm paid mileage. I'm a contract, I'm not an
24 employee so I have to drive my own vehicle.

25 Q When you say you're a contract, what does that 4:30PM

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1 mean? 4:31PM

2 A That means I'm not an employee. I have to bid for
3 my job.

4 Q Tell me how that works.

5 A You have to have these qualifications and you fill 4:31PM
6 out the paperwork and put down how much you would like
7 to have and bid.

8 Q And have you only bid once?

9 A I just got done bidding.

10 Q Did you get your job back? 4:31PM

11 A Yeah, I did.

12 UNIDENTIFIED VOICE: Are you regretting
13 that now after today?

14 Q You seem excited about that. So how are you paid?

15 A The Department of Ag pays me or the State of 4:31PM
16 Oklahoma and I send in a time card and a mileage sheet.

17 Q Okay. You get paid by the hour?

18 A Yes, I do.

19 Q So when you bid out, it's your rate per hour?

20 A Yes, sir. 4:31PM

21 Q Okay. Is anything withheld from your check?

22 A No.

23 Q So you've got to do all your own taxes?

24 A Yes, sir.

25 Q Are you offered any health benefits? 4:32PM

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1 A No. 4:32PM

2 Q Okay. Do you have a supervisor?

3 A Dan Parrish.

4 Q Okay. Do you exercise any independent judgment in

5 your job or do you just do what Dan tells you? 4:32PM

6 A I do what Dan tells me to do.

7 Q Do you feel like you can disagree with Dan and do

8 whatever you want?

9 A No.

10 Q Do you have certain hours where Dan expects you to 4:32PM

11 be working?

12 A I work all the time.

13 Q Because that's what is expected of you?

14 A No, I just -- I'm available to my growers all the

15 time and Dan can call early or call late. 4:32PM

16 Q Okay. Do you have a -- when you go out to a farm,

17 how do you identify yourself to a grower other than hi?

18 A I'm pretty identifiable to them. I mean, they

19 don't -- I don't get mistaken by too many people. They

20 have got to know my truck and pretty much me on a farm. 4:33PM

21 If I go on a complaint that nobody won't know who I am,

22 I carry a business card that says my name and poultry

23 inspector, Department of Ag.

24 Q Do you have one of those cards with you?

25 A Not with me right now I don't. 4:33PM

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1 Q Describe that card for me. 4:33PM

2 A It's just a regular business card, white, with a
3 State seal emblem on it.

4 Q It does have the State seal on it?

5 A I believe it does. 4:33PM

6 Q Does it have contact information on it?

7 A Yes, it does. My home address and my cell phone.

8 Q Okay. E-mail address?

9 A No.

10 Q Do you have an e-mail address? 4:33PM

11 A I have a personal e-mail address.

12 Q Okay. I think I'm about done. Did you print the
13 card yourself, the business cards?

14 A No, I didn't.

15 Q Was it provided to you by the State of Oklahoma? 4:34PM

16 A Yes, sir.

17 Q Did you have to pay for it?

18 A I don't think so.

19 MR. BOND: Okay. I don't have any more
20 questions. Thank you for your time. 4:34PM

21 A Thank you.

22 CONTINUED CROSS EXAMINATION

23 BY MS. LONGWELL:

24 Q I have just a few more to follow up on, as I told
25 you I might. Unfortunately I do for you. 4:34PM

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1 A That's fine. 4:34PM

2 Q But I promise to be done with you quick.

3 A You're okay.

4 Q Let me just start with saying although it appears
5 there are no -- none of the growers have contracts with 4:34PM
6 Peterson Farms that you inspect are located in the
7 Illinois River watershed, let me just ask you these
8 questions anyway.

9 A Okay.

10 Q To your knowledge, has any poultry grower who has 4:35PM
11 contracted with Peterson ever that you're aware of
12 intentionally polluted or attempted to pollute the
13 water of the Illinois River watershed?

14 A Not that I'm aware of.

15 Q Okay. And to your knowledge, have you ever 4:35PM
16 referred a complaint or issued or assisted in issuing a
17 violation or identified a violation for any poultry
18 grower who is contracted with Peterson Farm or who has
19 ever contracted with Peterson Farm who has -- alleging
20 that he has discharged poultry litter into the waters 4:35PM
21 of the Illinois River watershed?

22 A Not that I'm aware of.

23 Q Okay. And have you had -- have you investigated
24 any complaints or identified any violations of any
25 poultry grower who has contracted with Peterson Farms 4:36PM

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1 ever alleging that he had released poultry litter into 4:36PM
2 the water of the Illinois River watershed?

3 A No.

4 Q Have you ever floated the Illinois?

5 A Yes. 4:36PM

6 Q And how many times have you done that?

7 A A couple.

8 Q You're kind of from that area. Have you -- have
9 you done it at various times in your life or --

10 A Yeah. 4:36PM

11 Q When you were a kid?

12 A Right.

13 Q Have you floated the river recently?

14 A It's been three, four years ago.

15 Q When you were a child, did you know -- between the 4:36PM
16 time you were a child and this time that you floated
17 the river in the last two or three years -- two or
18 three year ago, did you notice any changes in the
19 river?

20 A Not that I would acknowledge. I mean, I wouldn't 4:36PM
21 have noticed anything.

22 Q Okay. Going back to the 2005 warrants and
23 attempted sampling on the poultry growers operation,
24 have you noticed your relationships with the growers
25 have changed since that event? 4:37PM

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1 A I don't think it's changed. I think it -- I think 4:37PM
2 they treat me pretty much the same.

3 Q Have you handled -- have you handled any
4 complaints differently since the filing of this
5 lawsuit? 4:37PM

6 A No.

7 Q There hasn't been any change in the protocols on
8 how you handle a complaint?

9 A I try to be consistent.

10 Q Have there been any changes in how you handle a 4:37PM
11 poultry inspection since the filing of this lawsuit?

12 A No.

13 Q Outside of the planning meeting your counsel has
14 advised you, instructed you not to comment on, did Dan
15 Parrish ever tell you what his opinion was of the 4:37PM
16 sampling that they tried to take in May of 2005?

17 A He's never -- he don't tell me opinions.

18 Q Outside of that planning meeting, did Dan Parrish
19 or anyone else at ODAFF tell you the reason for that
20 sampling? 4:38PM

21 A No, not that I can recall.

22 Q And your sampling in 2003 or 2004, I think, that
23 sampling you were talking about?

24 A That's a rough estimate time frame.

25 Q Do you know why other farmers who applied poultry 4:38PM

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1 litter were not identified for sampling of their 4:38PM
2 fields?

3 A Of the -- the first time I soil sampled?

4 Q Yes.

5 A At random? 4:38PM

6 Q Yes.

7 A I mean, it was up to me who I wanted to go to. I
8 picked who to go sample.

9 Q But were you directed to pick poultry growers who
10 applied poultry litter to their property? 4:39PM

11 A Yes.

12 Q Do you know why farmers who -- or cattlemen who
13 apply poultry litter to their property were not
14 identified for the sampling?

15 A Yeah, I don't know why. No, I don't. 4:39PM

16 Q I want to go back real quickly to Exhibit 18. I
17 just want to ask you a question. There was some
18 discussions about the purpose of an Animal Waste
19 Management Plan.

20 A Yes. 4:39PM

21 Q I'll try to finish this in two minutes. Okay.
22 The first paragraph of Jeff Andrews' Animal Waste
23 Management Plan states, "This Animal Waste Management
24 Plan includes the production, handling, and
25 distribution of animal waste in a manner that prevents 4:39PM

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1 or minimizes segregation of soil, water, air, plants 4:39PM
2 and animal resources," do you see that?

3 A Yes, I do.

4 Q Would you say -- would you agree with me that
5 that's the purpose of this plan or at least the stated 4:39PM
6 purpose of this plan?

7 A The stated purpose, yes.

8 Q So if a grower follows this plan as identified for
9 their farm, would you agree with me that that, in turn,
10 should minimize or prevent degradation of soil, water, 4:39PM
11 air, plant and animal resources based on the
12 production, handling and distribution of animal waste?

13 MS. WEAVER: Object to form. Calls for a
14 legal conclusion.

15 A You think you would assume from what it states, if 4:40PM
16 you follow what it states you would assume that you
17 are.

18 MS. LONGWELL: That's all the questions
19 that I have for you. Thank you so much, Mr. Berry?

20 THE WITNESS: Thank you, ma'am. 4:40PM

21 CROSS EXAMINATION

22 BY MR. SANDERS:

23 Q Mr. Berry?

24 A Yeah.

25 Q This is Bob Sanders. I've got just two or three 4:40PM

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1 questions. Can you hear me all right? 4:40PM

2 A Yes, sir.

3 Q I'm from Jackson, Mississippi, and I represent
4 Cal-Mail.

5 MS. WEAVER: Bob, I might interrupt you 4:40PM
6 just briefly because there's something you don't
7 know about. We're about to run out of tape and we
8 may get direction to stop.

9 MS. STEWART: That's fine. You all change
10 tape. I've just really got just a couple questions. 4:40PM

11 MS. WEAVER: We'll change the tape just to
12 make sure we don't interrupt you.

13 MS. STEWART: Okay, good.

14 THE VIDEOGRAPHER: We are now off the
15 record. The time is 4:40 p.m. 4:40PM

16 (Following a short recess at 4:40 p.m.,
17 proceedings continued on the record at 4:42 p.m.)

18 THE VIDEOGRAPHER: We are back on the
19 record. The time is 4:42 p.m.

20 Q Mr. Berry, I want to ask you just a couple 4:42PM
21 questions about this 2006 GPS survey.

22 A Yes.

23 Q You all did that survey, did you all label the
24 locations by company?

25 A No, I don't believe we did. 4:42PM

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1 Q All right. Did you survey only active farms or 4:42PM
2 did you also get GPS coordinates for inactive farms?

3 A Just the active farms.

4 Q Okay. I'm going to represent to you that in 2006,
5 Cal-Maine did not have any contract growers, so I 4:42PM
6 presume then that there aren't any Cal-Maine locations
7 on that GPS database that you all did, is that correct?

8 A That's probably correct.

9 Q Let me ask you just generally the same kind of
10 questions some of the others did. Do you have any 4:43PM
11 knowledge that any former Cal-Maine grower ever
12 released or allowed runoff from or discharged litter
13 into any waters of the State of Oklahoma?

14 A Not that I'm aware of.

15 Q And similarly, do you have any knowledge that any 4:43PM
16 former Cal-Maine grower ever intentionally contaminated
17 or polluted any of the waters of the State of Oklahoma?

18 A Not that I'm aware of.

19 MS. STEWART: That's all I have. Thank
20 you very much. 4:43PM

21 THE WITNESS: Thank you, sir.

22 MS. WEAVER: Jennifer?

23 CROSS EXAMINATION

24 BY MS. GRIFFIN:

25 Q This Jennifer Griffin. I represent Willow Brook 4:43PM

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1 Foods. If I could ask a couple of real quick 4:43PM
2 questions?

3 A Sure.

4 Q I was just wondering do you inspect any farms in
5 the Illinois River watershed that are operated by 4:43PM
6 growers who contract with Willow Brook Foods to grow
7 poultry?

8 A I have a couple of turkey farms, but I'm not real
9 sure if I remember who their integrator is.

10 Q Okay. Just based on the fact that you have a 4:44PM
11 couple of farms that I guess at this point may or may
12 not be growers that contract with Willow Brook Foods,
13 with respect to those farms, do you have any knowledge
14 that there were any dispute regarding any of those
15 growers intentionally contaminating or polluting the 4:44PM
16 waters of the Illinois River watershed?

17 A Not that I'm aware of.

18 Q Okay. And do you have any knowledge with respect
19 to those farms we were just discussing as to whether
20 those growers released any litter or caused any runoff 4:44PM
21 of litter into the waters of the Illinois River
22 watershed?

23 A Not that I'm aware of.

24 MS. GRIFFIN: I don't think I have any
25 further questions. 4:45PM

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1 MS. WEAVER: Anybody else? You have the 4:45PM
2 opportunity to read this transcript and sign it and
3 to make certain changes to see -- you see the court
4 reporter has taken that down, you just need to state
5 on the record whether you want to read and sign the 4:45PM
6 transcript or whether you want to waive your right
7 to do that?

8 THE WITNESS: I want to read and sign, is
9 that what you said?

10 MS. WEAVER: Right. 4:45PM

11 THE WITNESS: I want to read and sign.

12 THE VIDEOGRAPHER: This concludes the
13 deposition of Mr. David Berry. We are now off the
14 record. The time is 4:45 p.m.

15 (Whereupon, the deposition was concluded
16 at 4:45 p.m.)
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SIGNATURE PAGE

I, David Berry, do hereby certify
that the foregoing deposition was presented to me by
Marlene Percefull as a true and correct transcript of
the proceedings in the above styled and numbered cause,
and I now sign the same as true and correct.

Witness my hand this _____day of

_____, 2007.

David Berry

SUBSCRIBED AND SWORN TO before me

this_____ day of _____, 2007.

Notary Public

My Commission Expires:

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STATE OF OKLAHOMA)
) SS.
COUNTY OF TULSA)

I further certify that the foregoing 270 pages contain a full, true and correct transcript of the deposition taken at such time and place.

WITNESS MY HAND AND SEAL this ____ day of
September, 2007.

Marlene Percefull, CSR
CSR No. 01818

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CORRECTIONS TO THE DEPOSITION OF

DAVID BERRY

PAGE AND LINE NUMBER

CORRECTION

September 16, 2007

Ms. Sharon Weaver
Attorney at Law
502 W. 6th St.
Tulsa, OK 74101

Re: Depo of David Berry

Dear Ms. Weaver:

Enclosed please find your copy of the above referenced deposition. Also enclosed you will find the original signature page and correction sheet for the deposition.

Please have Mr. Berry review his deposition, make any corrections on the correction sheet and sign the original signature page in front of a Notary Public.

As soon as this procedure has been completed, please return the original signature page and the correction sheet to me.

If you have any questions, please contact me.

Sincerely,

Marlene Percefull, CSR